Supreme Court, U.S.
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No. 96-

In The

Supreme Court of the United States

October Term, 1996

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,

Petitioner,

v.

SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Even if New Jersey's rule for resolving church-property disputes is now neutral principles, did the court below err when it held that express secular language in the congregation's charter and contracts did not require the real property to remain with the denomination once the congregation seceded from it?

LIST OF PARTIES

The Conference of African Union First Colored Methodist Protestant Church*

Scotts African Union Methodist Protestant Church, f/k/a African Union First Colored Methodist Protestant Church of Camden, New Jersey

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* The African Union Methodist Protestant Church and Connection is effectively the Conference's parent corporation, although neither of them has any stock or any stockholder, because the Conference is a Delaware non-stock business corporation that performs the temporal functions of the AUMP Church, which is a religious denomination incorporated in Delaware.

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OPINIONS BELOW

The opinion of the court below has not yet been officially reported and is reprinted in the Appendix [APP. *at* 3]. The trial court's opinion was not officially reported and is reprinted in the Appendix [APP. *at* 40].

JURISDICTION

The trial court had jurisdiction over this case under 28 *U.S.C.* § 1332(a)(1) and § 1441(a) and probably under § 1331 and § 1441(b) as well. The appellate court had jurisdiction under 28 *U.S.C.* § 1291 and entered judgment on 16 October 1996. This Court has jurisdiction under 28 *U.S.C.* § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

THE CONSTITUTION OF THE
UNITED STATES OF AMERICA

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. . . .

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

Amendment XIV

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The African Union Methodist Protestant Church and Connection (which has also used the name "African Union First Colored Methodist Protestant Church" since 1866) is a religious denomination, incorporated in Delaware, whose file number in Delaware's Department of State is 2524706. The Conference submitted to the trial court [7/21/95 motion under *Fed.R.Civ.P.* 60(b) at Ex. A] and the appellate court [10/19/95 reply brief at Ex. A] a record attested by Delaware's Secretary of State certifying that the AUMP Church is the entity incorporated in 1813 under the name "Union Church of African Members." Both courts owed that record full faith and credit [28 *U.S.C.* § 1739] and were required to take judicial notice of the facts in it [*Fed.R.Evid.* 201 (b)(2), (d), (f)], but they did not [APP. *at* 12, 36].

Scotts was incorporated in New Jersey in 1915 as a congregation of the AUMP Church, and its charter required it to follow the rules and regulations of the AUMP Church [APP. *at* 10, ¶ 2]. The Church's rules and regulations are set forth in its *Book of Discipline* [APP. *at* 5]. In 1841 the Church established the Conference to

administer the *Discipline* for its congregations [*Union Church of Africans v. Sanders*, 6 Del. [1 Houst.] 100, 104-05 (Del. 1855)], and in 1941 the Conference was incorporated in Delaware [APP. *at* 5]. The 17th edition of the *Discipline*, in effect from 1958 until 1986, provided that if a congregation seceded, its property remained in the AUMP Church [APP. *at* 15].

In 1974, while the *1958 Discipline* was in effect, Scotts acquired property on Baird Boulevard in Camden NJ [APP. *at* 4] that by 1992 was worth at least $100,000. As it had done every year since the late 1950s, on 27 May 1990 and 19 May 1991 Scotts signed annual contracts "intend[ing] to be legally bound hereby" obligating the trustees and the pastor to abide by the secession clause of the *1958 Discipline*, which the contracts incorporated by specific reference [APP. *at* 5-6].

In April 1991, pursuant to resolutions passed by the Church's representative legislature at regular meetings with the delegates from Scotts voting in favor, the pastors for all the AUMP congegations, including Scotts, signed quitclaims of their interests in real property to the Conference [APP. *at* 6-8]. In January 1992 Scotts sued the Conference in New Jersey state court to invalidate its quitclaim, and the Conference removed to federal district court, alleging both diversity and federal question jurisdiction [APP. *at* 8]. Thus the Conference asserted at the beginning of the federal litigation that this was a church-property dispute, governed by the First Amendment, and that was the issue it argued throughout the proceedings in the trial and appellate courts [APP. *at* 8-9].

Both courts assumed they were sitting in diversity [APP. *at* 27], and the Conference does not contend otherwise. Although the trial court had ruled the only claim Scotts had alleged was for fraud, and at trial Scotts did not prove either a false representation or reliance upon one, the district court entered judgment awarding Scotts the property [APP. *at* 9].

The Conference appealed and argued in the court below:

(1) the Supreme Court of New Jersey declared in *Protestant Episcopal Church v. Graves*, 417 A.2d 19, 24 (N.J. 1980), *cert. denied*, 449 U.S. 1131 (1981), that New Jersey's rule for resolving property disputes in hierarchical churches is deference, and the cases that have applied neutral principles since then have not only been employment-contract cases instead of property cases [APP. *at* 27] but have also virtually all been in churches that were not hierarchical or in organizations that were not churches [8/28/95 opening brief at 21], because being run by or for a religion does not make a school a church, any more than, as the Duke of Wellington said, being born in a stable makes a man a horse; but

(2) under a neutral principles analysis the Conference was entitled to the property, as Pennsylvania's courts ruled in *Conference of AUFCMP Church v. Shell*, 659 A.2d 77 (Pa.Cmwlth.), *appeal denied*, 668 A.2d 1138 (Pa. 1995), because [APP. *at* 35-36, n.7]:

(a) Scotts took title to the Baird Blvd. property while express secular language in its charter bound it to obey the *Discipline* and express secular language in the

1958 Discipline bound it to convey the property to the Conference if it seceded from the AUMP Church;

(b) Scotts signed the April 1991 quitclaim while express secular language in its 1990-1991 pastoral contract bound it to obey any amendments to the *Discipline* dealing with ownership of property, which the resolutions were; and

(c) Scotts seceded in March 1992 while express secular language in its 1991-1992 pastoral contract (which Scotts signed after its April 1991 quitclaim was recorded) bound it to obey the *1958 Discipline*'s provision requiring Scotts to convey the property to the Conference when it seceded; and

(3) the court below, sitting as a state court in diversity [*Guaranty Trust Co. v. York*, 326 U.S. 99, 108 (1945)], owed full faith and credit [*U.S.Const.*, Art. IV, § 1; 28 *U.S.C.* § 1738] to the findings of the Pennsylvania courts in *Shell* [10/19/95 reply brief at 12-13] and to the findings of Delaware's highest court in *Sanders* [10/19/95 brief *at* 6-7].

In its opinion the court below:

(1) suggested that the Conference's entire legal argument depended on New Jersey's rule not being neutral principles [APP. *at* 25], but in fact the Conference argued vigorously that if New Jersey's rule *is* neutral principles, then the Conference is still entitled to the property, as the Pennsylvania courts ruled in *Shell* under that analysis [8/28/95 opening brief at 26-27; 10/19/95 reply brief at 13];

(2) said that the Conference had not addressed the issue that the congregation's bylaws could not override its charter [APP. *at* 36], but in fact the Conference argued that the reason the *Discipline*'s provisions bound Scotts was that they were the *Conference's* bylaws, and its charter explicitly required Scotts to obey the Conference's bylaws [8/28/95 brief at 15-16; 10/19/95 brief at 4];

(3) admitted that the trial court's analysis "touched on the church-governance sphere" [APP. *at* 34] the Conference argued the case involved [APP. *at* 33], when in fact the appellate court itself devoted 17 of the 34 pages of text in its opinion [APP. *at* 5-16 & 33-37] to interpreting the Church's governing documents differently than the AUMP Church itself had interpreted them;

(4) said that the trial judge "found that the terms of the secession clause were so vague as to be inapplicable" [APP. *at* 15], but the Pennsylvania trial court had found that the language of that clause was "clear and unambiguous" [*Shell*, 659 A.2d at 79], and the appellate court knew that [APP. *at* 35, n. 7]; and

(5) relied on the trial court's decision on a motion for preliminary injunction in *Mother AUFCMP Church v. Conference of AUFCMP Church*, No. 12055-NC (Del.Ch. 16 May 1991), as supporting the trial court's judgment here [APP. *at* 35], but in that case the same judge later ruled that if the Conference had raised the issue of the pastoral contract that required the congregation to convey its property to the Conference upon seceding from the AUMP Church, that "would have operated as a complete defense to the [congregation]'s ownership claim" [7/13/95 opinion at 15, *reprinted* at APP. 38 of the petition

for a writ of certiorari to the Supreme Court of Delaware submitted to this Court in *African Union Methodist Protestant Church and Connection v. Mother African Union First Colored Methodist Protestant Church* and two other cases], and here the Conference actively litigated that contract issue.

REASONS FOR GRANTING THE PETITION

I.

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS DECIDED THE IMPORTANT FEDERAL QUESTION OF APPLYING THE FIRST AMENDMENT TO A CHURCH-PROPERTY DISPUTE IN A WAY THAT CONFLICTS WITH A DECISION BY THE COURT OF LAST RESORT OF THE COMMONWEALTH OF PENNSYLVANIA.

If the court below erred in invalidating the April 1991 quitclaim for the Scotts property, then its judgment must be reversed and the property thus returned to the Conference. If invalidating that quitclaim was not error, then Scotts was in the same situation as the Pennsylvania congregation in *Shell*: That congregation's charter subjected it to the authority of the AUMP Church, and it bought its property in 1980 while the *1958 Discipline* was in effect, took title in its own name alone, and seceded from the AUMP Church in 1989 [659 A.2d at 78]; Scotts accepted the AUMP Church's authority in its charter, bought its property in 1974, took title in its own name, and seceded in 1992.

If New Jersey's rule for deciding church-property cases is still deference, then the judgment below must be reversed. If New Jersey's rule is now neutral principles, however, and if this is a pure property case, then the court below had to enforce the express secular language in the 1915 charter's purpose clause requiring Scotts to obey the *Discipline* and in the *1958 Discipline's* secession clause [*Jones v. Wolf*, 443 U.S. 595, 603 (1979)]. The interpretation of those documents was a matter of law, not fact, required to be reviewed *de novo* on appeal. The court below did, in fact, consider those two documents, but it ruled that:

(1) the charter did not make clear that the AUMP Church was the entity given authority over Scotts [APP. *at* 36]; and

(2) the terms of the secession clause were too vague to be enforced [APP. *at* 15].

If the meaning of those two clauses was clear, then it was error not to enforce them. If their meaning was not clear to the court below, however, then that court was required to give full faith and credit to the ruling in *Shell* that they meant the congregation had to convey the property to the Conference upon seceding [659 A.2d at 79].

This was not a pure property dispute, however: As in the related litigation in Delaware, the issue here is which entity is truly the AUMP Church and therefore rightly wields ecclesiastical authority over all the AUMP congregations. The right to control their real property is incidental to that religious authority.

Uncontroverted evidence in the court below [APP. *at* 5, n. 2] established that the AUMP Church is the oldest independent black denomination in this country, having been incorporated three years before Richard Allen formally incorporated the AME Church in 1816. There has been only one AU/AUMP/AUFCMP Church since 1813, the one in the courts' findings in *Union Church of Africans v. Sanders*, in *Cleaver v. Conference of AUFCMP Church*, 240 F.2d 57 (D.C.Cir. 1956), and in *Conference of AUFCMP Church v. Shell*. Its historical distinction has been recognized by scholars, by church groups, and by governmental entities ranging from the United States Senate through the Internal Revenue Service and Delaware's Secretary of State to the Mayor of Wilmington DE.

By ruling that it was Scotts itself, and not Delaware corporation #2524706, to whose authority the 1915 charter subjected Scotts [APP. *at* 36-37], that court established Scotts as the true AUMP Church referenced in that charter, and that is precisely what the First Amendment forbids.

II.

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS DECIDED THE IMPORTANT FEDERAL QUESTION OF APPLYING THE FIRST AMENDMENT TO A CHURCH-PROPERTY DISPUTE IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

It is undisputed that the First Amendment applies to the states, through the Fourteenth Amendment, as well as

to the federal government [APP. *at* 18] and that the relevant decisions of this Court are the ones the court below reviewed at APP. 17-24, but its decision in this case was contrary to them.

If petitioner is right that this is a governance case that affects property [APP. *at* 32], then the court below erred by inquiring into the AUMP Church's governmental processes [APP. *at* 5-16 & 33-37] instead of enforcing the Church's rulings. If the court below is right that this is a pure property case and New Jersey's rule is neutral principles [APP. *at* 32 & 31-32], then the court below erred by not enforcing the express secular language in the 1915 charter's purpose clause and the *1958 Discipline's* secession clause [APP. *at* 10, ¶ 2 & *at* 15]. Either way, the judgment below is in direct conflict with this Court's relevant decisions.

The First Amendment prohibits any civil court's interference in a church's governance of its members [*Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)], and the crucial point is that until March 1992 there was no membership in Scotts separate from membership in the AUMP Church; Scotts had no doctrine, ritual, clergy, or IRS tax-exemption ruling of its own, and it was the AUMP Church that admitted new congregants to Scotts and excommunicated congregants from Scotts if it chose to. It was a matter of polity when the AUMP Church required Scotts to quitclaim its property to the Conference, and the minutes of the congregation's 9/30/91 meeting, which Scotts put into evidence in the district court [6/15/92 summary response, Ex. P-3], make clear that this dispute is over that exercise of authority.

"[E]cclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria," so in a dispute over governance of a hierarchical church a civil court must enforce the decisions of the highest ecclesiastical authority, even if those decisions are arbitrary, against the church's own rules, or beyond the church's jurisdiction [*Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 714-15 (1976)].

Therefore if the Pope tells Roman Catholics they have to eat fish on Fridays and canoe paddles on Wednesdays [APP. *at* 32, n.6], no civil court in this country can countermand that, and the same considerations apply if he tells them they have to quitclaim the parish's property to the diocese. The law cannot prefer one religion over another, so anything the Holy Father and College of Cardinals can make a Roman Catholic do, the Presiding Prelate and Conference can make an African Union Methodist Protestant do, and what the AUMP Church's highest authority required its members to do – and required in express, secular, written terms in their governing documents – was hold property subject to the Church's control and leave it in the Church if they withdrew from membership.

Every unhappy family is unhappy in its own fashion, Tolstoy wrote; in contrast, all the unhappy churches whose property disputes this Court has ever decided resemble one another. The AUMP Church, of which the Conference is the administrative arm, is typical: It is a hierarchical religious denomination whose governing documents expressly give it control over property its congregations hold; a congregation has seceded and

taken real property out of the denomination, and the courts in the state have ruled for the congregation. Petitioner now prays this Court to grant the AUMP Church the same relief it has given other churches in this unhappy situation.

CONCLUSION

Petitioner respectfully requests that this Court issue a writ of certiorari directed to the United States Court of Appeals for the Third Circuit in the case below.

Respectfully submitted,

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APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5379

SCOTTS AFRICAN UNION METHODIST
PROTESTANT CHURCH

v.

CONFERENCE OF AFRICAN UNION FIRST COLORED
METHODIST PROTESTANT CHURCH a/k/a AFRICAN
UNION METHODIST PROTESTANT CHURCH

The Conference of AUFCMP Church,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 92-CV-00880)

Present: Sloviter, *Chief Judge*, Roth and McKee, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on February 5, 1996.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered May 10, 1995, be, and the same is

hereby affirmed. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ P. Douglas Sisk

Clerk

Dated: October 16, 1996

Filed October 16, 1996

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5379

SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH

v.

CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH a/k/a AFRICAN UNION METHODIST PROTESTANT CHURCH

The Conference of AUFCMP Church,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 92-CV-00880)

Argued: February 5, 1996

Before: SLOVITER, *Chief Judge*, ROTH and McKEE, *Circuit Judges*

(Filed October 16, 1996)

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OPINION OF THE COURT

SLOVITER, *Chief Judge.*

At issue is the ownership of certain real property in Camden, New Jersey. The district court held that Plaintiff Scotts African Union Methodist Protestant Church ("Scotts Church") was the valid titleholder to the property in dispute, rejected the counterclaim filed by Defendant Conference of African Union First Colored Methodist Protestant Church ("the Conference") to quiet title to the same property, and enjoined the Conference from claiming any ownership interest therein. The Conference appeals.

I.

Background

Scotts Church was incorporated in 1915 as a nonprofit corporation under New Jersey's Act to Incorporate Associations Not For Pecuniary Profit, ch. 181, 1898 N.J. Laws 422, *repealed by* New Jersey Nonprofit Corporation Act, ch. 127, 1983 N.J. Laws 397 (codified at N.J. Stat. Ann. § 15A:2-1). It had acquired property on Kaighn Avenue in Camden, New Jersey around 1904, and conducted religious services and other activities there until 1974. In 1974, Scotts Church sold the Kaighn Avenue property and used the proceeds to purchase property on Baird Boulevard in Camden, with title in the name of Scotts Church.

At some point in time left unspecified in the record, *see* App. at 11; Joint Final Pre-Trial Order at 2-4, Scotts Church became a member congregation of the Conference. The Conference is the administrative body of a religious organization known as the African Union Methodist Protestant ("AUMP") Church.[1] The AUMP Church is a regional association of several local churches located in the

1. Apparently, the AUMP Church is also referred to interchangeably as the African Union First Colored Methodist Protestant ("AUFCMP") Church. *See* App. at 11.

mid-Atlantic states and tied by their common adherence to the AUMP denomination and doctrine. The association was incorporated in Delaware in 1941 and changed its name to "The Conference of African Union First Colored Methodist Protestant Church" in 1953. Def. ex. 15. The Conference claims itself the successor to the Union Church of Africans, which was incorporated in 1813, although that was an issue of fact determined against the Conference at trial.[2]

The Conference is defined in the *Book of Discipline*, *see infra*, as an "administrative body in the [structure] of the AUMP Church," Pl. ex. 5 at 157, although there is some ambiguity in the record as to whether the Conference and the AUMP Church are distinct entities. We need not resolve this question for purposes of this appeal. The Conference and the AUMP Church are governed by *The Book of Discipline of the African Union First Colored Methodist Protestant Church and Connection in the United States of America and the World* ("*Book of Discipline*" or "*Discipline*"), which contains rules and procedures that serve as corporate bylaws of the Conference and Scotts Church. Scotts Church regularly has sent delegates to Conference meetings involving local church participation. It additionally has concluded annual "pastoral contracts" with pastors selected for it by the Conference, whom Scotts Church agreed to compensate and retain on a yearly basis.

The pastoral contracts concluded for the 1990-91 and 1991-92 years state that the trustees of Scotts Church "will be responsible as to all mentioned in the Book of Discipline according to the 1958 AUFCMP Church, Inc., and any/all revisions made to the Book of Discipline, entitled the Duties of the Trustees." Def. exs. 3, 4. The contracts also provide that the pastor of Scotts Church "is responsible to Trustees of the above said mentioned Church, of the first part, [and] will be responsible as to all mentioned in the Book of

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2. The only evidentiary support presented by the Conference for this claim was the "Historical Preface" to the *Book of Discipline*, *see infra*, and a treatise chronicling the history of the AUMP Church entitled *"Invisible" Strands in African Methodism: A History of the African Union Methodist Protestant and Union American Methodist Episcopal Churches, 1805-1980* by Lewis V. Baldwin ("*Invisible Strands*").

Discipline according to the 1958 AUFCMP Church, Inc. and any/all revision[s] made to the Book of Discipline, entitled The Duty of Ministers in Charge." *Id.*

On January 19, 1991, the Conference held a meeting at which the attendees approved a resolution entitled "Church Property" ("Property Resolution"). The present dispute between Scotts Church and the Conference implicates three portions of the Property Resolution's text in particular. The first is a paragraph entitled "Titles to Properties" and provides in relevant part:

> [T]itles to all properties held . . . by a local church . . . shall be held in trust for The African Union Methodist Protestant Church and subject to the provisions of its Discipline. Titles are not held by The African Union Methodist Protestant Church or by "The General Conference of The African Union Methodist Protestant Church," but instead by the incorporated conferences, agencies, or organizations of the denomination, or in the case of unincorporated bod[i]es of the denomination, by boards of trustees established for the purpose of holding and administering property.

Def. ex. 1 at C-1.

The second portion of the 1991 Property Resolution, a group of paragraphs under the heading "Trust Clauses in Deeds," requires in part that "all written instruments of conveyance" by which church properties are held or acquired for worship purposes contain the following language:

> In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the African Union Methodist Protestant ministry and members of The African Union Methodist Protestant Church, subject to the Discipline, usage, and ministerial appointments of said church as from time to time auth[or]ized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises.

Id. This "Trust Clauses in Deeds" portion of the Property Resolution also provides that where a deed exists without the required trust clause language, the local church nevertheless owes a "responsibility and accountability" to the AUMP Church if it has affirmed its affiliation by accepting a Conference-appointed pastor. *Id.* at C-2. For purposes of his decision, the magistrate judge assumed that this "responsibility and accountability" language was intended to compel a local church to hold its property in trust for the Conference even where the governing deed omitted the required trust clause. App. at 21.

Finally, a paragraph of the Property Resolution entitled "Incorporated Local Church Property — Title and Purchase," provides:

> [T]he title to all property, now owned or hereafter acquired by an incorporated local church . . . shall be held by and/or conveyed to the corporate body in its corporate name, in trust for the use and benefit of such local church and of The African Union Methodist Protestant Church.

Def. ex. 1 at C-11. According to an affidavit and testimony from Bishop Delbert Jackson, Presiding Prelate of the Conference, the Property Resolution became an amendment to the *Book of Discipline* upon adoption. *See* Summ. Judg. Op. at 20; Trial Transcript at 41; *see also* Appellant's Brief at 8.

Some three months later, at a meeting held on April 6, 1991, the Conference approved a "Signature Resolution" which provides that "ministers in charge of [the local] churches shall be empowered to sign official documents pertaining to the individual local church and The Conference." Def. ex. 2; App. at 21-22. According to Bishop Jackson's affidavit, the Signature Resolution, like the Property Resolution, constituted an amendment to the *Book of Discipline* upon adoption. *See* Summ. Judg. Op. at 21.

The Conference promptly used these two resolutions as ostensible authority to take title to property held by the local churches, a move that we are told generated a number

of lawsuits.[3] At the April 6, 1991 meeting, the Conference — invoking its newly adopted Signature Resolution — instructed Scotts Church pastor Dr. Eva M. Walters to sign a quitclaim deed transferring Scotts Church's Baird Boulevard property to the Conference. Dr. Walters signed the deed, which states that "the trustees of the SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH have caused its name by Reverend Dr. Eva M. Walters, its Pastor, to be hereunto set." Pl. ex. 3. The deed was recorded on April 26, 1991.

Scotts Church's certificate of incorporation dated 1915 provides that its trustees "shall not dispose of any real estate so acquired by them as Trustees, except [as] such act be authorized by a vote of two thirds of the members of said Church Body." Pl. ex. 1. Neither the trustees nor the members of Scotts Church approved the transfer of the Baird Boulevard property, and on March 26, 1992 — by a 24-0 vote of its members — Scotts Church opted to disaffiliate itself from the Conference.

Scotts Church filed suit in January 1992 in the Chancery Division of the Superior Court of New Jersey, Camden County, seeking a declaratory judgment that the Conference held no interest in the Baird Boulevard property and that the quitclaim deed was invalid, as well as injunctive relief preventing the Conference from asserting any ownership interest in the property. The Conference, alleging both federal question and diversity jurisdiction, had the case removed to the United States District Court of New Jersey. Counterclaiming to have "its" title to the Baird Boulevard property quieted, the Conference also moved for dismissal of the action, summary judgment, and imposition of Rule 11 sanctions. The Conference's motions were denied.

In ruling on the summary judgment motion, the district court addressed, *inter alia*, the Conference's argument that under First Amendment principles the court must give

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3. *See St. Thomas AUMP Church v. Conference of AUFCMP Church*, No. 13006-NC, 1995 WL 694390 (Del. Ch. Nov. 6, 1995); *Mother AUFCMP Church v. Conference of AUFCMP Church*, No. 12055, 1991 WL 85846 (Del. Ch. May 16, 1991).

deference to the determinations of the Conference, as the highest authority in a hierarchical church. The court rejected that argument, relying on the New Jersey Supreme Court's opinion in *Elmora Hebrew Center v. Fishman*, 593 A.2d 725 (N.J. 1991), to hold that the courts of New Jersey would apply "neutral principles of law" to resolve this dispute rather than deferring to the church hierarchy.

The parties consented to trial by a magistrate judge (hereafter interchangeably referred to as the "trial court") pursuant to 28 U.S.C. § 636(c) who, after a one-day bench trial, determined the quitclaim deed invalid and granted the declaratory and injunctive relief sought by Scotts Church. Scotts Church had contended that the deed was invalid because Bishop Jackson had fraudulently induced Dr. Walters to sign by falsely assuring her that the Scotts Church trustees had already authorized the transfer. The magistrate judge found no evidence to support that assertion or the fact that Dr. Walters had relied upon any representation regarding the trustees' approval upon signing the deed. App. at 23.

Instead, the magistrate judge, applying "neutral principles of law" in accordance with the district court's summary judgment opinion, evaluated the relevant documents, provisions, and factual circumstances, and determined that the quitclaim deed was invalid and that Scotts Church retained title to the disputed property. The content of that determination can be described in terms of six distinct issues, though the opinion itself was not organized accordingly.

(1) *Scotts Church Certificate of Incorporation*

The first was the text of Scotts Church's certificate of incorporation, which dates from 1915. That certificate reads, in relevant part:

> AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH OF CAMDEN, NEW JERSEY.
>
> THIS IS TO CERTIFY that we, Perry Gleaves, Leonard S. Smith, John F. Bartee, Thomas Kenaman, Enoch Grisden, Joseph Pierce, and Charles Stewart, do hereby associate ourselves into a corporation under and by

virtue of an act of the Legislature of the State of New Jersey . . . .

1. The name of the association or corporation is AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH OF CAMDEN, NEW JERSEY.

2. The purposes for which this association or corporation is formed are for the worship of Almighty God in accordance with the dictates of our consciences and the rules[,] regulations, doctrines, practices and beliefs of the African Union Colored Methodist Protestant Church;

To acquire and possess property, both real and personal, as Trustees as aforesaid, by gift, grant or devise and to hold same in trust for the uses and purposes of said Church Body; to mortgage and dispose of the same.

That said Trustees *shall not dispose of any real estate* so acquired by them as Trustees, *except* [as] such act be authorized by *a vote of two thirds of the members of said Church Body*, who shall have been members in good standing in said Church Body for at least one year before the date of the meeting at which such action shall be proposed.

That the Trustees of said African Union First Colored Methodist Protestant Church of Camden, New Jersey shall, at the time of their election, have been members of said Church in good standing for at least one year preceding their election . . . .

The successors to the Trustees hereinbefore named shall be [e]lected by ballot . . . at a meeting of the members of the Church . . . .

. . . .

4. There shall be seven Trustees of this association or corporation and the names of those selected for the first year are as follows. [The same seven names listed at the beginning of the certificate are here repeated, with accompanying Camden addresses.]

Pl. ex. 1 (emphasis added).

The parties disputed, in particular, the meaning of the second clause of Paragraph 2 ("To acquire and possess property . . ."). Scotts Church argued that the phrase "said Church Body" appearing in that clause referred to the same church body appearing both at the top of the certificate and in Paragraph 1: the "African Union First Colored Methodist Protestant Church *of Camden, New Jersey*," (emphasis added), or Scotts Church. Scotts Church contended, therefore, that its certificate of incorporation specifically provided that property acquired by Scotts Church would be held "in trust for the uses and purposes" of Scotts Church, and prohibited the disposition of such property unless authorized by a two-thirds vote of its members.

The Conference, on the other hand, insisted that the same phrase "said Church Body" more naturally referred to the denominational entity "African Union Colored Methodist Protestant Church," the church body mentioned in the clause immediately preceding it in Paragraph 2. It argued, therefore, that the certificate of incorporation mandated that property acquired by Scotts Church be held in trust for the AUMP Church.

The magistrate judge determined that the text of the certificate supported Scotts Church's interpretation. First, he observed that although the Paragraph 2 reference to the AUMP Church specified adherence to the doctrine of that particular denomination, the Conference itself as an administrative body was nowhere mentioned in the document. *See* App. at 16-17.

Second, the magistrate judge interpreted the second clause of Paragraph 2 in light of the clause immediately following it, which permitted the disposition of property only where "authorized by a vote of two thirds of the members of said Church Body, who shall have been members in good standing in said Church Body." The magistrate judge relied on the two-thirds vote and members-in-good-standing references, and the improbability that either would involve the entire population of the AUMP organizational hierarchy, as strong indication that the recurring phrase "said Church Body" referred to the Scotts Church congregation proper. *See* App. at 17.

Third, the magistrate judge assumed arguendo, as the Conference urged, that the *Book of Discipline* and *Invisible Strands*, a historical tract, established that the African Union Church was incorporated in 1813 and that the African Union Church merged in 1865 with the First Colored Methodist Protestant Church to form the African Union First Colored Methodist Protestant Church. Nevertheless, he found those facts insufficient to establish that the Conference was the same entity as, or legal successor to, the African Union Church. The magistrate judge reasoned that as the Conference had failed to show that it had existed as a legal entity at any time before its own 1941 incorporation, it could not have been the legal beneficiary of a 1915 trust provision. He thus determined that Scotts Church's 1915 certificate of incorporation could not have directed the holding of property in trust for the yet unformed Conference. *See* App. at 12-14, 17.

Under the magistrate judge's interpretation of the certificate of incorporation, Scotts Church's property was held in trust for Scotts Church itself and subject to transfer only upon trustee and congregation approval. It followed that the April 6, 1991 quitclaim deed was invalid unless the Conference could provide a basis for overriding the certificate of incorporation.

(2) *Property Resolution*

The magistrate judge rejected the Conference's contention that the Property Resolution could provide a basis for the quitclaim deed. The magistrate judge observed that while the language of the Property Resolution requiring local churches to hold their property in trust for the AUMP Church may have imposed upon the local churches certain obligations, none of its terms empowered pastors to transfer property by signing deeds. The magistrate judge determined that the resolution's text in fact "required incorporated local churches to hold property in *their own name*, in trust for the purposes of that local church and for the AUMP Church," and therefore did not "legitimize a deed which purports to transfer property out of the name of Scotts Church and to [the Conference]." App. at 26.

In addition, the magistrate judge declared the Property Resolution void because it was adopted at a meeting for

which inadequate notice had been provided. He noted that the *Book of Discipline* did not establish notice requirements for Conference meetings, and held that where a corporation's bylaws prescribe no such requirements "notice shall be given as provided for in state or local law." App. at 36. He therefore applied Title 8, § 222 of the Delaware Code requiring written notice of the place, time, and purpose of a special meeting "not less than 10 nor more than 60 days before the date of the meeting." App. at 36-37 (quoting Del. Code Ann. tit. 8, § 222(b)). Finding that no such notice had been given, the magistrate judge declared the Property Resolution to be the product of a procedurally defective meeting, and therefore invalid.

(3) *Signature Resolution*

The magistrate judge also eliminated the Signature Resolution as a possible basis for the validity of the April 6 quitclaim deed. As with the Property Resolution, the magistrate judge first examined the language of the Signature Resolution and noted that while the resolution authorized local pastors to sign official business documents on behalf of local churches, nothing in the Signature Resolution eliminated the specific requirement applicable to Scotts Church that the church members first approve property transfers. Rather, the Signature Resolution "merely authorizes Dr. Walters to sign the deed once the vote has been taken and action authorized." App. at 26.

This interpretation is confirmed by statements made at the April 6, 1991 meeting by Bishop Jackson, and placed into evidence by an audiotape of the meeting, which the magistrate judge discussed as follows:

> When asked whether the Signature Resolution would override the authority of local church trustees, the *Bishop replied that the resolution "does not take away the power of the trustees."* The Bishop repeatedly reassured the members that the resolution did not change existing procedures, that the pastor and trustees are to work together in any business action, and that the resolution only gave the pastor the power to sign *along with* the trustees. In response to one member's concern that the pastor could potentially act

> without the members' knowledge and "squeeze" the trustees out of power, the Bishop replied, "Before the pastor or the trustees can do anything, they have to take it back to the people."
>
> The attorney present at the meeting to present this resolution, K. Kay Shearin, Esq., also assured the members that "what the Bishop told you a few minutes ago was absolutely right." Ms. Shearin explained the impact of the Signature Resolution as simply giving the local churches the power of the Conference behind them when they want to transact business, particularly when they want to borrow money for expansion and development projects. "We're not taking anything away from the individual churches. *The local trustees still have their authority.*"

App. at 26-27 (emphasis added) (citations omitted).

Viewing these assurances as further undercutting any possibility that the Signature Resolution had displaced either Scotts Church's two-thirds vote requirement for property transfers or the autonomy of its trustees, the magistrate judge held that the Signature Resolution, like the Property Resolution, "did not provide authority for Dr. Walters to sign a deed conveying the property in the absence of member and trustee approval," and therefore could not establish the validity of the quitclaim deed. App. at 27.

(4) *Counterclaim/Secession Clause*

The magistrate judge also rejected the Conference's counterclaim to quiet title. The Conference had contended that even if the quitclaim deed was invalid, once Scott Church seceded, the Conference necessarily emerged as titleholder because Scotts Church was to hold property in trust for the Conference. The magistrate judge noted that the 1974 deed placed title to the Baird Boulevard property in Scotts Church's name without trust language, and thus neither the deed nor the text of Scotts Church's certificate of incorporation bound Scotts Church to hold the property in trust for the Conference.

The only remaining argument proffered by the Conference in support of its counterclaim was based on a clause in the

Book of Discipline that all church property "belonging to the Connection shall be deeded to the members and Connection, and should the members disband or secede the property shall remain in the possession of the Connection." Def. ex. 10; App. at 29. The provision further states that "each local Church shall be so incorporated that if the members should disband or secede, the said Church and property shall remain in the Connection." *Id.* This secession clause, which appeared in the seventeenth edition of the *Book of Discipline* that was published in 1958, was apparently omitted from the most recent eighteenth edition of 1986.

The magistrate judge rejected the applicability of the secession clause on multiple grounds. First, he observed that the clause appeared only in a section of the 1958 *Discipline* entitled "The Duty of Ministers in Charge." Def. ex. 10; App. at 29. Citing the text of the 1990-91 and 1991-92 pastoral contracts, the magistrate judge concluded that the provisions of that section bound only Scotts Church's pastor individually, rather than the local church collectively.

Second, the magistrate judge determined that the 1958 *Discipline*'s secession clause, omitted from the current 1986 18th edition, was not effective at the time of Scotts Church's secession from the Conference in 1992, nor during the pendency of the 1990-92 pastoral contracts that required adherence to the *Book of Discipline*.

Finally, the magistrate judge found that the terms of the secession clause were so vague as to be inapplicable. The clause specifies that, upon a local church's secession, the church property "shall remain in the possession of the Connection." The magistrate judge noted that the *Book of Discipline* defined the "Connection" as "[t]he structural organization of all AUMP Local Churches having a connected network of compatible interdependent relationships to achieve the purpose of the church," but defined the "Conference" in different terms — "[a]n administrative body in the struct[ure] of the AUMP Church such as general, annual, district, quarterly and ch[u]rch conference." Pl. ex. 5 at 157; App. at 31. Finding those divergent descriptions enough to prevent the "broad

assumption" that property belonging to the Connection also belonged "derivatively" to the Conference, and invoking the principle that ambiguous language be construed against the drafter, the magistrate judge determined the secession clause ineffective. App. at 31-32.

(5) *Constructive Trust*

The magistrate judge declined the Conference's request to create a constructive trust in its favor, finding that Scotts Church did not obtain any unjust enrichment nor perform any wrongful act. *See* App. at 32-33.

(6) *Conflict Rule*

Finally, the magistrate judge noted that where a corporation's certificate of incorporation and bylaws are in conflict, New Jersey law dictates that "the certificate of incorporation ordinarily governs." App. at 38. Thus, the magistrate judge concluded that even if the Conference's claims regarding its Property Resolution were given full weight, the Resolution would be ineffective because it conflicted with the procedures in Scotts Church's certificate of incorporation for the disposition of property.

The magistrate judge accordingly entered declaratory judgment for Scotts Church, declaring the quitclaim deed invalid, and further enjoined the Conference from claiming any ownership interest in the disputed property.[4] The Conference appeals. We have jurisdiction pursuant to 28 U.S.C. § 1291. We must accept the magistrate judge's findings of fact unless they are clearly erroneous. Fed. R. Civ. P. 52(a); *Grupo Protexa v. All American Marine Slip*, 20 F.3d 1224, 1231 (3d Cir.), *cert. denied*, 115 S. Ct. 481 (1994); *Goodman v. Lukens Steel Co.*, 777 F.2d 113, 128 (3d Cir. 1985), *aff'd*, 482 U.S. 656 (1987). Our review of the legal conclusions, including the assessment of state law, is plenary. *Gruber v. Owens-Illinois Inc.*, 899 F.2d 1366, 1368 n.1 (3d Cir. 1990).

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4. The Conference filed for post-trial relief under Fed. R. Civ. P. 60(b), but the district court dismissed the motion, holding that the appeal pending before this court stripped it of jurisdiction to hear it. The Conference does not appeal from its dismissal of the Rule 60(b) motion.

II.

Discussion

A. *Federal Constitutional Law*

The Conference argues that the magistrate judge erred as a matter of law in applying neutral principles instead of the principle of deference. To understand this contention, we must travel through the Supreme Court's precedents involving intrachurch property disputes, in which it has attempted to draw a line between the constitutional interest in preserving the autonomy of religious organizations, on the one hand, and the civil interest in the definitive settlement of property disputes, on the other. We review each of the applicable Supreme Court decisions. As viewed seriatim, they provide historical perspective to the current status of the law.

The first such case, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), arose from a post-Civil War dispute between pro- and anti-slavery factions of a Kentucky church that was a member of the Presbyterian Church of the United States. The pro-slavery group, which was the minority faction, claimed title to the church property based on the fact that its views were more consistent with the teachings of the Presbyterian Church at the time of the Kentucky church's founding. The Presbytery of Louisville, the next highest governing church body after the church itself, declared the pro-slavery minority the true church body and, therefore, rightful titleholder. The General Assembly, however, the highest governing body in the Presbyterian Church, decided in favor of the majority abolitionist faction instead.

The *Watson* Court, following the General Assembly's result, ruled in the abolitionist group's favor, and in the process established the following principles: federal courts are competent to enforce express terms contained in trust instruments governing the use or ownership of property. 80 U.S. at 723-24. However, courts may not resolve nor inquire into matters of religious doctrine in order to determine entitlements to property. *Id.* at 725, 727-29. Where a dispute arises between factions of an independent

congregation, "the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations;" if the church had always governed itself by majority rule, for example, the majority faction would prevail. *Id.* at 725. Finally, where the dispute is between subordinate and superior bodies of a single hierarchical church organization, and

> whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Id. at 727.

The *Watson* approach is popularly termed the "deference" approach, and requires judicial recognition of the decisions of a hierarchical church's highest body on matters of discipline, faith or ecclesiastical rule, custom or law. Although *Watson* was decided before the Fourteenth Amendment was interpreted to render the First Amendment applicable to the states, and therefore cannot strictly be termed a "constitutional" interpretation, later Supreme Court opinions have recognized its holding as grounded in concerns of constitutional dimension. *See, e.g., Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

The *Watson* rule of deference was further defined in *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929), a case in which a layman sued the Archbishop, claiming a right to be appointed to a chaplaincy and to receive a concomitant income according to the terms of a trust created 100 years earlier by an ancestor. The Archbishop had refused to appoint the plaintiff on the ground that he did not meet the qualifications for a chaplain specified by the 1918 Code of Canon Law. The Supreme Court rejected the Archbishop's contention that secular courts lacked any jurisdiction over the case because of the ecclesiastical nature of the dispute, holding instead that there was subject matter jurisdiction because the suit involved an attempt to enforce the terms of a trust. *Id.* at 16. Nonetheless, the Court deferred to the Archbishop's decision to deny the petitioner the chaplaincy, holding:

> Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, *the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive*, because the parties in interest made them so by contract or otherwise.

Id. at 16 (emphasis added) (footnote omitted). Thus, while *Watson* directed blanket judicial deference to determinations of a church's highest body in ecclesiastical matters, dictum in *Gonzalez* suggested there could be some judicial review of church decisions in those exceptional cases in which "fraud, collusion, or arbitrariness" was alleged.

The next case, *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), involved a dispute over use and occupancy of the Russian Orthodox cathedral in New York between Archbishop Leonty, elected to preside over all Russian Orthodox churches in America by the local churches themselves, and Archbishop Fedchenkoff, appointed to preside over the same churches by the Supreme Church Authority in Moscow. The decision as to the rightful occupant turned on which of the two had been validly selected as ruling hierarch for the American churches. The Supreme Court ruled in Fedchenkoff's favor, stating that matters of "ecclesiastical government" were among those "questions" marked by *Watson* as out-of-bounds for civil adjudication, *id.* at 115, and noting that "[e]ven in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls," *id.* at 120-21 (footnote omitted).

The Court's subsequent opinion in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), is of particular significance to the issue before us. That case involved the decision of two Presbyterian churches in Georgia to withdraw from the national Presbyterian Church in the

United States because of the latter's progressive tendencies (ordination of women, church pronouncements on political issues, etc.). The general church acknowledged their withdrawal and attempted to reabsorb the local church properties. The local churches responded with lawsuits in state court.

Holding that Georgia law implied a trust of local church property for the benefit of the general church so long as the general church adhered to the same "tenets of faith and practice existing at the time of affiliation by the local churches," the state trial court presented the case to a jury, which was instructed to determine whether the general church's actions constituted a "substantial abandonment" of its "original tenets and doctrines." *Id.* at 443. The jury found in favor of the local churches, and the Supreme Court of Georgia affirmed.

The Supreme Court of the United States overturned the decision, explaining that

> [i]t is obvious . . . that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. *Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property.* And *there are neutral principles of law*, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But *First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.*

393 U.S. at 449 (emphasis added).

Thus, as an alternative to the *Watson/Gonzalez* deference approach where the courts would be "engaging in the narrowest kind of review of a specific church decision [to determine] whether [the decision] resulted from fraud, collusion, or arbitrariness," *id.* at 451, the *Presbyterian Church* Court suggested that the Georgia courts could apply "neutral principles" of secular property law to resolve intrachurch disputes.

One year later, in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970), the Supreme Court upheld a state court's application of this "neutral-principles" approach in a three-sentence per curiam opinion. The case involved an intrachurch property dispute between the General Eldership of the church and two secessionist congregations. Citing the Maryland appeals court's reliance "upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property," the Court concluded that "resolution of the dispute involved no inquiry into religious doctrine" and therefore did not violate the First Amendment. *Id.* at 367-68.

Justice Brennan, apparently intent on providing state courts with some explanatory guidance, filed a concurring opinion, outlining the acceptable approaches to intrachurch disputes: "[A] State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 368 (Brennan, J., concurring) (emphasis in original).

Justice Brennan identified and contrasted the deference approach and the neutral-principles approach. A state may adopt the deference approach taken in *Watson* and "enforce the property decisions" made within a church of congregational or hierarchical polity unless " 'express' terms in the 'instrument by which the property is held' condition the property's use or control in a specified manner." *Id.* at 368-69 (quoting *Watson*, 80 U.S. at 722). The latter instance would be appropriate for application of the neutral-principles approach in intrachurch disputes. Citing *Presbyterian Church*, Justice Brennan stated: " '[N]eutral principles of law, developed for use in all property disputes,' provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses,

and general state corporation laws." *Id.* at 370. He cautioned, however, that "general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues. For example, provisions in deeds or in a denomination's constitution for the reversion of local church property to the general church, *if conditioned upon a finding of departure from doctrine*, could not be civilly enforced." *Id.* (emphasis added) (footnote omitted).

The dispute in *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696 (1976), the next case in the series, was over control of the Serbian Eastern Orthodox American-Canadian Diocese, its property and its assets. In response to complaints about the Diocese's Bishop, Bishop Dionisije, the central church removed him as Bishop and reorganized the American-Canadian Diocese into three new dioceses. The Diocesan National Assembly subsequently repudiated the central church's actions and declared the Diocese completely autonomous. Bishop Dionisije filed suit in state court seeking injunctive and declaratory relief.

The Illinois Supreme Court entered judgment that invalidated Bishop Dionisije's removal as "arbitrary" because the removal proceedings were not conducted according to the court's interpretation of the Church's constitution and penal code and voided the Diocesan reorganization as beyond the scope of the central church's authority. *Id.* at 708. The United States Supreme Court overturned both parts of the judgment, and explained:

> The fallacy fatal to the judgment . . . is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.

Id.

The Court declared that "where resolution of the disputes cannot be made without extensive inquiry . . . into religious law and polity," courts must accept the applicable decision of the highest church body in a hierarchical church as

binding. *Id.* at 709. The Court noted (1) that the First Amendment's command that civil courts refrain from resolving controversies over religious doctrine "applie[d] with equal force to church disputes over church polity and church administration," *id.* at 710, (2) that, *Gonzalez* notwithstanding, no "arbitrariness" exception existed "in the sense of an inquiry whether the decision of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations," *id.* at 713, (3) that the court's evaluation of conflicting testimony concerning internal church procedures and rejection of the highest church body's interpretations were particularly inappropriate, *id.* at 718-19, (4) that reliance on "neutral principles" could not justify a court's substitution of its own interpretation of church rules for that of the church's highest body, *id.* at 721, and (5) that the church constitutional provisions at issue "were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity," *id.* at 723.

The final case in the series, *Jones v. Wolf*, 443 U.S. 595 (1979), gives shape to the proper modern judicial approach to intrachurch disputes. *Jones* arose from a dispute between two factions of a Presbyterian church congregation in Macon, Georgia over possession and use of the church property. The church had always been a member of the Presbyterian Church in the United States ("PCUS"), but a majority of the congregation voted to disassociate the church from the PCUS and join the Presbyterian Church in America. The Augusta-Macon Presbytery, the next highest body in the PCUS hierarchy after the congregation itself, appointed a commission to investigate and it ruled the minority faction constituted the "true congregation." So armed, the minority faction sued in state court for exclusive possession and use of the church property.

Georgia's courts had adopted the neutral-principles approach to resolve intrachurch property disputes and, purporting to apply them, the trial court reasoned that because the deed conveyed the property to the local church, and neither state law, the corporate charter of the local church, nor the constitution of the general church created

any trust in favor of the general church, legal title to the property was vested in the local congregation. Then, without further elaboration, the trial court declared the majority faction to be the "true congregation" entitled to possession. The Georgia Supreme Court affirmed.

The United States Supreme Court upheld the Georgia Supreme Court's reliance on the neutral-principles approach and reaffirmed the viability of that approach under the Constitution. The Court stated that "[t]he primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity." *Id.* at 603. It continued, "[t]he method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.*

The Court noted that although the Augusta-Macon Presbytery, the highest church body to decide the question, had declared the minority faction to be the congregation, the Georgia Supreme Court had determined just the opposite. Significantly, notwithstanding *Watson*'s deference approach and the decision in *Milivojevich*, the Supreme Court did not hold that the result by the Georgia courts could not be sustained. Instead, the Court held that there was no requirement that the Georgia Supreme Court adopt a rule of compulsory deference. Nonetheless, because the basis for the Georgia courts' decision that the majority faction represented the "true congregation" of the local church was unclear and was made without adequate analysis, the Supreme Court remanded for determination by the Georgia courts whether that state had adopted a presumptive rule that a voluntary religious organization is represented by a majority of its members. If so, then the Georgia courts' judgment awarding the property to the majority faction would stand under the neutral-principles approach. However, the Court cautioned that if Georgia law provided instead that a congregation's identity should be determined according to the rules of the hierarchical parent church, the Georgia courts would owe deference to the Presbytery's determination in favor of the minority faction. *See id.* at 609.

It is evident from the above that before we can apply the instructions learned from the Supreme Court's cases to the issue at hand, we must determine whether the district court correctly ruled that New Jersey has adopted the neutral-principles approach. To do so, we examine the leading cases in that state.

B. *New Jersey Law*

Subsumed in the Conference's legal argument is its understanding that New Jersey has not adopted the neutral-principles approach. It is certainly true that in *Protestant Episcopal Church v. Graves*, 417 A.2d 19 (N.J. 1980), *cert. denied*, 449 U.S. 1131 (1981), the New Jersey Supreme Court reviewed the history and workings of both the deference and neutral-principles approaches and, over a strong dissent that favored the neutral-principles approach, announced:

> In the absence of express trust provisions, we conclude that the hierarchical (*Watson*) approach should be utilized in church property disputes in this State. Only where no hierarchical control is involved, should the neutral principles of law principle be called into play.

Id. at 24.

In that case, a local Protestant Episcopal church had voted to disaffiliate from the New Jersey Diocese and the larger church organization, and the Diocese sued to restrain the dissenting parishioners from any use of the church property not sanctioned by the Diocese. Although the Conference argues that this case is controlling, it is distinguishable from the Scotts Church dispute in a critical respect. Unlike the present case in which the deed names the local church itself, title to the property at issue in *Graves* was in the Rector, Wardens and Vestrymen of the local church. Ownership therefore turned on who held those positions, which was a hotly contested subject of dispute between the parties. The Rector had been "ecclesiastically deposed" by the Diocese and the Wardens and Vestrymen had arguably disqualified themselves from holding those offices by disaffiliating from the central church.

This dispute was clearly one of church governance. As the *Graves* court observed: "The basic dispute herein is unquestionably doctrinal in nature, the ecclesiastical determination of which incidentally affects the control over local church property." *Id.* (citing *Milivojevich*, 426 U.S. 696 (1976)). Thus, even under a neutral-principles approach, the court would have had to defer to the resolution of the authoritative ecclesiastical body. *See Jones v. Wolf*, 443 U.S. at 604 (under neutral principles, where deed incorporates religious concepts in provisions relating to ownership, and interpretation would require court to resolve religious controversy, court must defer to church hierarchy).

The deference rule was summarily applied by the New Jersey court to resolve another intrachurch property dispute between a diocese of the Protestant Episcopal Church and local church officials decided the same day and involving virtually identical facts. *See Diocese of Newark v. Burns*, 417 A.2d 31, 33 (N.J. 1980) ("All of these contentions as well as the ancillary points raised by defendants have been considered and disposed of in our opinion in *Graves*. There we approved the hierarchical church approach utilized in *Watson v. Jones*."), *cert. denied*, 449 U.S. 1131 (1981). Three years later, when the New Jersey Supreme Court was confronted again with an intrachurch dispute, this time involving employment rather than property in a congregational (non-hierarchical) church, *see Chavis v. Rowe*, 459 A.2d 674, 678 (N.J. 1983), the court reaffirmed its declaration in *Graves* that the choice between the *Watson* or the neutral-principles approach, "depend[s] on the church structure," and held that "New Jersey courts are to use neutral principles in adjudicating property disputes within a congregational church." 459 A.2d at 678.

Were these the only applicable cases considering the issue, we would find problematic the district court's decision here, followed by the magistrate judge, to apply the neutral-principles approach inasmuch as it appears that the AUMP Church is hierarchical. However, the district and magistrate judges relied on the New Jersey Supreme Court's later decision in *Elmora Hebrew Center, Inc. v.*

Fishman, 593 A.2d 725 (N.J. 1991), where the court stated that in resolving intrachurch disputes "a court may, where appropriate, apply neutral principles of law to determine disputed questions that do not implicate religious doctrine." *Id.* at 730.

The Conference, though conceding that "[it] is not clear what election New Jersey has made between deference and neutral principles," Appellant's brief at 21, argues that because *Elmora Hebrew Center* involved an employment rather than a property dispute, it is not controlling here and that *Graves* is authoritative evidence of New Jersey's adoption of the deference rule in church property disputes. It views *Graves* as the only strictly "authoritative" declaration of the state supreme court because it, like this case, involved a property dispute within a hierarchical church organization whereas the subsequent New Jersey Supreme Court opinions featuring discussion of the deference and neutral-principles approaches, including *Elmora Hebrew Center*, were rendered in non-property contexts.

However, the Conference offers no principled basis for treating property disputes differently from other types of civil disputes in this regard, nor has the New Jersey Supreme Court suggested that such a distinction is relevant. Rather, that court has indicated, particularly in its most recent opinions on this issue, that the appropriate level of review turns not on the type of civil dispute involved but on the extent to which the dispute implicates questions of religious doctrine or polity.

As a federal court sitting in diversity, we must predict how the state supreme court would resolve a given dispute where the applicable state law is unclear. *See Clark v. Modern Group Ltd.*, 9 F.3d 321, 326 (3d Cir. 1993). In forming that prediction, the federal court "must consider relevant state precedents, analogous decisions, considered dicta, scholarly works, and any other reliable data tending convincingly to show how the highest court in the state would decide the issue at hand." *McKenna v. Ortho Pharmaceutical Corp.*, 622 F.2d 657, 663 (3d Cir.), *cert. denied*, 449 U.S. 976 (1980).

We have recognized, along with respected commentators, that "[c]onsidered dicta by the state's highest court may provide a federal court with reliable indicia of how the state tribunal might rule on a particular question," and be considered " 'conclusive,' " particularly if it is " 'a carefully considered statement by the state court.' " *Id.* at 662 & n.21 (quoting C. Wright, *Law of Federal Courts*, § 58, at 270 (3d ed. 1976)).

We have even stated that "a federal court sitting in diversity may diverge from existing precedent when there is sufficient evidence that the highest state court would be willing to entertain a change in its common law." *W.A. Wright, Inc. v. KDI Sylvan Pools, Inc.*, 746 F.2d 215, 218 (3d Cir. 1984); *see also Becker v. Interstate Properties*, 569 F.2d 1203, 1206 (3d Cir. 1977) ("[A] federal court must be sensitive to the doctrinal trends of the state whose law it applies."). "[R]elevant state precedents must be scrutinized with an eye toward the broad policies that informed those adjudications, and to the doctrinal trends which they evince." *McKenna*, 622 F.2d at 662 (quoting 1A *Moore's Federal Practice*, ¶ 0.307, at 3077 (2d ed. 1979)).

Five recent decisions show the New Jersey courts' movement towards a rule that calls for application of neutral principles regardless of church structure, as long as the dispute does not entangle the court in questions of religious doctrine or governance. In *McElroy v. Guilfoyle*, 589 A.2d 1082 (N.J. Super. Ct. Law Div. 1990), a Roman Catholic priest sued the Camden Diocese and two of its bishops, claiming they had breached a promise to pay legal fees the priest incurred in defending against criminal charges. Despite the clearly hierarchical structure of the Roman Catholic Church, the court applied neutral principles, declaring that

> secular courts may decide civil disputes between a religious body and its members or its clergy if those disputes involve purely secular issues and can be resolved without entanglement with matters of faith, discipline or doctrine. In such cases, courts are to apply neutral principles of law to the facts presented.

Id. at 1083-84 (citation omitted). As this was not the state's supreme court, the impact of the court's recommendation

of neutral-principles analysis would be limited, but for the state supreme court's later acceptance of precisely the same analysis.

A year later in *Elmora Hebrew Center*, a case involving a suit by a synagogue seeking enforcement of its discharge of a rabbi, the New Jersey Supreme Court signalled a realignment in support of the neutral-principles approach in property disputes:

> [C]ourts have arrived at several acceptable means for confining their adjudications to the proper civil sphere. Civil courts can accept the authority of a recognized religious body in resolving a particular doctrinal question. In disputes involving a church governed by a hierarchical structure, courts should defer to the result reached by the highest church authority to have considered the religious question at issue. Similarly, in disputes involving a church with a congregational structure, courts should defer to resolutions by a majority (or other appropriate subgroup) of the church's governing body.
>
> *Without regard to the governing structure of a particular church*, a court *may, where appropriate, apply neutral principles of law to determine disputed questions that do not implicate religious doctrine.* "Neutral principles" are wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal evaluations.

593 A.2d at 729-30 (emphasis added) (citations omitted).

Thus, in *Elmora Hebrew Center* the New Jersey Supreme Court appears to have abandoned the bright-line rule formed in *Graves* and *Chavis* that the deference approach be applied to disputes in hierarchical churches and the neutral-principles doctrine be applied to disputes in congregational churches. Particularly significant is the New Jersey Supreme Court's statement in *Elmora Hebrew Center* that "[t]his 'neutral principles' approach is particularly suited to adjudications of property disputes," *id.* at 730, and that "[t]he application of the 'neutral principles' doctrine presents the potential advantage of permitting parties to assure a consistent approach to

questions of property ownership or church membership by inclusion of appropriate terms in deeds, contracts, or by-laws," *id.* The court's glowing, and certainly gratuitous, commendation of neutral-principles analysis in intrachurch property disputes strongly suggests a willingness to shift accordingly in an appropriate case.

The same indication was given by the state supreme court a year later in a pair of cases decided the same day. In *Welter v. Seton Hall University*, 608 A.2d 206 (N.J. 1992), former nuns who had been discharged by Seton Hall, a Catholic university, sued, alleging that the University had breached their employment contracts. A court of the state's appellate division had concluded that the dispute was not one for civil adjudication, but the New Jersey Supreme Court reversed. Citing "Justice Handler's comprehensive opinion" in *Elmora Hebrew Center*, the New Jersey Supreme Court stated categorically that "[i]n appropriate circumstances a court may apply neutral principles of law to determine disputed questions that do not implicate religious doctrine." *Id.* at 212.

The court emphasized that a court's choice between the deference and neutral-principles approaches should turn on whether the dispute implicates questions of religious doctrine or polity. "Only when the underlying dispute turns on doctrine or polity should courts abdicate their duty to enforce secular rights. Judicial deference beyond that demarcation would transform our courts into rubber stamps invariably favoring a religious institution's decision regarding even primarily secular disputes." *Id.* at 213.

Perhaps alluding to *Graves*, it further explained:

> This case differs markedly from the vast majority of previous intra-religion cases, which challenged deprivations of a party's status within a religion and which concerned only incidental deprivations of the secular trappings of that former status within the faith. Just as the existence of a tangential secular issue does not authorize civil courts to override primarily doctrinal determinations by authorities in hierarchial [sic] religions, *inconsequential doctrinal issues that were irrelevant* to the employment relationship *do not*

> *preclude doctrinally-objective enforcement of a secular interest pursuant to a secular agreement.*

Id. at 217 (emphasis added) (citation omitted).

The other case decided by the New Jersey Supreme Court that day, *Alicea v. New Brunswick Theological Seminary*, 608 A.2d 218 (N.J. 1992), provided an example of a case in which judicial application of neutral principles was not appropriate. There a professor brought suit against a seminary alleging breach of an employment promise. Determining that the professor performed a "ministerial function" and held "doctrinally-sensitive" responsibilities, the court concluded that to interfere in the church's employment decisions regarding such a position would necessarily involve impermissible entanglement in matters of church polity. *Id.* at 223-24. The court cited extensively to its opinions in *Elmora Hebrew Center* and *Welter* but made no reference to *Graves*.

Finally, in *Ran-Dav's County Kosher, Inc. v. State*, 608 A.2d 1353 (N.J. 1992), *cert. denied*, 507 U.S. 952 (1993), the New Jersey Supreme Court's opinion reinforced limitation of the *Watson* approach to only those property disputes that are doctrinally charged, and affirmatively endorsed the use of neutral-principles analysis in property disputes:

> We recognized in *Elmora Hebrew Center* that civil courts may resolve controversies involving religious groups if resolution can be achieved by reference to neutral principles of law, but that they may not resolve such controversies if resolution requires the interpretation of religious doctrine. Neutral principles may be particularly suited for adjudications of property disputes, or civil contract actions, but not where disputes involve interpretations of religious doctrine itself.

Id. at 1363 (citations omitted).

The New Jersey cases we have examined show a decided progression of New Jersey court decisions toward adoption of a neutral-principles approach in resolving intrachurch property disputes like the one before us.[5] We thus conclude

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5. We recognize that head counting is an extra-jurisprudential consideration meriting little formal attention, but cannot avoid noting

that the magistrate judge's application of that approach was not inconsistent with the law of New Jersey, and therefore not legal error. We turn then to examine the Conference's contentions in light of this legal background.

C. *Analysis in Light of "Neutral Principles"*

The Conference contends that its dispute with Scotts Church is an intrachurch governance dispute, one over church organization or administration, and not simply one over ownership of property. It argues that, therefore, whether the forum state has adopted the approach requiring deference or neutral principles, a court is obligated to defer to superior church authority.

We reject that argument, as did the trial court, because it is clear that this dispute is hardly one of "governance."[6] Unlike the issue in *Kedroff*, which entailed a decision whether the Russian Orthodox Archbishop in America had been properly selected, or in *Milivojevich*, which centered on

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that the 1980 *Graves* decision was four-to-three, while the 1991 *Elmora Hebrew Center* and 1992 *Welter* and *Alicea* decisions each commanded a unanimity of seven votes. *See McGowan v. University of Scranton*, 759 F.2d 287, 293 n.10 (3d Cir. 1985) (fact that only two justices from debatably authoritative state supreme court majority remained on the bench "interesting to note" but without "bearing upon our disposition of this case"). Although three justices dissented in *Ran-Dav's*, they did not take issue with that aspect of the majority opinion we rely on here. *See* 608 A.2d at 1376 (endorsing use of neutral principles where "no religious issues are involved").

6. The Conference offers the following as its view of the scope of church "governance:"

> There is a television commercial for the situation comedy "Coach" where someone says, "You can't do that," and the coach answers, "I'm his coach — I can make him eat a canoe paddle if I want to." That fairly well describes how the Supreme Court has consistently said it is, and under the First Amendment must be, in disputes between churches and their members. . . .

Appellant's Reply Brief at 9. We express no opinion as to whether the Supreme Court would accept this view as accurate or hyperbolic because, as discussed in the text, the issue on appeal is a property dispute, not one of church polity or doctrine.

whether the Serbian Orthodox Bishop in North America had been properly removed, this case is only incidentally ecclesiastical. Instead, it consists almost entirely of a raw dispute over property rights. In *Milivojevich* the Supreme Court distinguished between the two, stating, "this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals." 426 U.S. at 709.

The Conference suggests that its decision in April 1991 to require all the congregations to quitclaim their real property interests was one of governance, but that action was not nearly as doctrinally charged as that in *Jones v. Wolf*, 443 U.S. 595 (1975), where the Presbyterian Church declared one faction of a divided congregation to be the "true" congregation. Yet even in *Jones*, the United States Supreme Court authorized the Georgia courts to use neutral principles to override the hierarchical church's determination.

More importantly, the extent to which a court may permissibly inquire into disputes of this kind turns on the specific elements of the inquiry itself and the degree to which it might trench upon doctrinally sensitive matters, rather than on conclusory labelling of the whole dispute as either "secular" or "ecclesiastical." Examination of the trial court's determinations here shows that most of them were unquestionably free of doctrinal relevance. The trial court's finding that the phrase in Scotts Church's certificate of incorporation, "to hold same in trust for the uses and purposes of said Church Body," referred to Scotts Church was based principally on the absence of any mention of the Conference in the certificate's text, and the reappearance of the phrase "said Church Body" in the same certificate's two-thirds vote and members-in-good-standing provisions. Neither consideration implicates "questions of religious doctrine, polity, [or] practice." *Jones*, 443 U.S. at 603.

The trial court used similar legal analysis of language in rejecting the Signature Resolution as a basis for the quitclaim deed's validity, noting that its text had nothing to say about property transfers. In doing so, the court accepted the representations of Conference officials regarding the Resolution's limited effect. Neither of these

passive inferences was anything more than the neutral, fact-driven conclusion that every conventional property or contract suit demands.

Although some aspects of the trial court's opinion — interpreting provisions of the *Book of Discipline*, for example — may have touched on the church-governance sphere, they were irrelevant to the ultimate determination. The trial court's alternative ground for decision, its application of the state-law conflict rule, was free of doctrinal implications and provides an adequate basis for affirmance.

The trial court determined that even if the terms of the *Book of Discipline*, including the Property Resolution, were assumed effective and binding on Scotts Church, they simply functioned as Scotts Church's corporate bylaws. *See* N.J. Stat. Ann. § 15A:1-2(c) (" 'Bylaws' means the code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which these rules are designated[.]"). Indeed, the Conference itself described the *Book of Discipline* as "bylaws" at oral argument. Because those terms conflicted with Scotts Church's certificate of incorporation, which requires a two-thirds vote by church members before any property is transferred, and because New Jersey law states that in such conflicts the certificate prevails, it followed that the two-thirds vote requirement had not been overridden, and no property transfer had been effected. *See* App. at 38-39. Since the Signature Resolution was an amendment to the *Book of Discipline* and the secession clause was one of its original provisions, they are also by-laws which under New Jersey law cannot override Scotts Church's certificate of incorporation.

The trial court's application of the conflict rule was consistent with the well-established rule in New Jersey that provisions of a corporation's charter or articles of incorporation enjoy priority over contradictory or inconsistent by-laws. *See Leeds v. Harrison*, 87 A.2d 713, 717-18, 720 (N.J. 1952) (religious nonprofit corporation may adopt by-laws only "if conformable and subordinate to" corporation's charter); *L.L. Constantin & Co. v. R.P. Holding Corp.*, 153 A.2d 378, 383 (N.J. Super. Ct. Ch. Div. 1959) ("[W]here inconsistency exists between by-laws and

certificate of incorporation, the latter ordinarily governs . . . ."); *see also Elkins v. Camden & Atlantic Railroad Co.*, 36 N.J. Eq. 467, 468-69 (N.J. Ch. 1883); *Kearney v. Andrews*, 10 N.J. Eq. 70, 72-74 (N.J. Ch. 1854); *Model Business Corporation Act Annotated* § 2.06(c) (3d ed. 1993); 18 C.J.S. *Corporations* §§ 112(a), 114(a), 115(d) (1990); 18A Am. Jur. 2d *Corporations* §§ 313, 314 (1985 & Supp. 1996).

The trial court's holding was also consistent with the Delaware Court of Chancery's resolution of a case nearly identical to this one filed against the Conference by a local Delaware AUFCMP church that involved a quitclaim deed signed at the same April 6, 1991 meeting at issue here. *See Mother AUFCMP Church v. Conference of AUFCMP Church*, No. 12055, 1991 WL 85846 (Del. Ch. May 16, 1991). As in this case the Conference defended the validity of the quitclaim deed by reference to the Property and Signature Resolutions and, as in this case, the local church's certificate of incorporation pre-dated the incorporation of the Conference in 1941 and specified that property could not be transferred without the consent of two-thirds of the members of the local church. The court's language in that decision could apply equally to Scotts Church:

> [B]y the defendants' own characterization, those documents [the Property and Signature Resolutions] occupy, at best, the status of by-laws of the [local church]. Assuming without deciding the validity of that characterization, the January 12th "by-law" placing local church properties "in trust" for the Conference runs afoul of the principle that where a by-law conflicts with the provisions of the charter, the by-law is a nullity.

Id. at *8; *see also St. Thomas AUMP Church v. Conference of AUFCMP Church*, No. 13006-NC, 1995 WL 694390 (Del. Ch. Nov. 6, 1995) (applying collateral estoppel to the Conference's claims based on the adverse decision *Mother AUFCMP Church*).[7]

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7. The Conference cites a Pennsylvania state court case, *Conference of AUFCMP Church v. Shell*, 659 A.2d 77 (Pa. Commw. Ct.), *appeal denied*, 668 A.2d 1138 (Pa. 1995), which held that under the *Book of Discipline*'s

Thus, even if the Conference's claims regarding its Property Resolution, Signature Resolution, and secession clause are given full weight, under basic, well-established principles of state law, they cannot override the certificate of incorporation's two-thirds vote requirement. Application of this neutral rule of priority effectively disposes of the Conference's principal contentions without engagement of any ecclesiastically sensitive issues. Significantly, the Conference has not mentioned — let alone challenged — this independent basis for the trial court's decision.

The Conference's remaining arguments are decidedly less compelling, and we discuss each of them only briefly.

The Conference devotes much of its briefs to its contention that the magistrate judge erred in rejecting its claim that it is the legal successor to the 1813 "Union Church of Africans," arguing that the judge erroneously failed to admit evidence proving that fact and that these errors "caused most of its other errors." *See* Brief of Appellant at 14-16.[8] Paradoxically, at oral argument, it conceded that this issue is "not important." In any event, the argument is inconsequential. Even if the Conference were assumed to be successor to the Union Church, that at most suggests that the term "said Church Body" in Scotts Church's 1915 certificate of incorporation *could* have referred to a denominational church already extant at that time. The magistrate judge, however, concluded that "said Church Body" referred to Scotts Church itself, and did so on the independent ground that the portion of the certificate of incorporation requiring "a vote of two thirds of

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secession clause, a local AUMP church's property reverted to the Conference after the local church seceded. There are several important distinctions. The local church in *Shell* had not been incorporated until 1977, well after the Conference's incorporation in 1941, the church's certificate of incorporation stated expressly that it was to be bound by the *Book of Discipline*, and its certificate contained no requirement comparable to the two-thirds vote provision in the certificate of incorporation of Scotts Church.

8. The same contention was rejected by the Delaware Court of Chancery in *Mother AUFCMP Church v. Conference of AUFCMP Church*, No. 12055, 1991 WL 85846 at *3 (Del. Ch. May 16, 1991).

the members of said Church Body, who shall have been members in good standing in said Church Body" was a clear indication that "said Church Body" was the Scotts Church congregation proper, not the entire AUMP hierarchy. *See* App. at 16-17.

The Conference also argues that the trial court erred in determining that the Conference had not contributed any of the money paid for the Baird Boulevard property. That is a factual finding that is not clearly erroneous. In any event, absent either an indication that any controlling terms in the relevant instruments tied property entitlement to actual expenditure or some request for equitable intervention, the source of the purchase price is irrelevant. To the extent the decision by the trial court turned on its findings of fact, we conclude that none of the dispositive findings is clearly erroneous. *See* Fed. R. Civ. P. 52(a).

III.

Conclusion

To summarize, we view as correct the district court's determination that a neutral-principles approach may be applied in New Jersey to resolve hierarchical intrachurch property disputes. We additionally find no error in the magistrate judge's application of neutral-principles analysis and resulting substantive determinations that the April 6, 1991 quitclaim deed is invalid and that Scotts Church remains the valid titleholder to its Baird Boulevard property. We will therefore affirm the judgment of the district court.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH,	:	Civil Action No. 92-880 (JBS)
Plaintiff,	:	
v.	:	(Filed May 4, 1995)
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	:	
Defendant.	:	

JUDGMENT

This matter having been tried to the Court without a jury; and

For the reasons stated in the Findings of Fact and Conclusions of Law entered this date;

IT IS this 4th day of May, 1995 hereby ORDERED and ADJUDGED:

1. That judgment be entered on Count I of the Amended Complaint in favor of plaintiff and against defendant; and

2. That the April 6, 1991 quitclaim deed transferring the real property of 2536 Baird Boulevard, Camden, New Jersey, to the defendant is hereby declared invalid; and

3. That the defendant is hereby enjoined from claiming any ownership interest in the above-mentioned property; and

4. That judgment be entered on Count II of the Amended Complaint in favor of defendant and against plaintiff; and

5. That judgment be entered on defendant's Counterclaim in favor of plaintiff and against defendant; and

6. Costs shall be taxed in favor of plaintiff.

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States
Magistrate Judge
By Consent,
28 U.S.C. § 636(c)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH,	:	
Plaintiff,	:	Civil Action No. 92-880 (JBS)
v.	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	:	
Defendant.	:	

(ORIGINAL FILED May 4, 1995)

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ROBERT B. KUGLER, United States Magistrate Judge:

INTRODUCTION

Plaintiff, Scotts African Union Methodist Protestant Church ("Scotts Church"), brings this action for declaratory and injunctive relief against Defendant. The Conference of African Union First Colored Methodist Protestant Church ("the Conference"). Plaintiff claims that title to a piece of real property located in Camden, New Jersey was fraudulently or otherwise unlawfully transferred from the plaintiff to the defendant when the plaintiff's pastor, the Reverend Dr. Eva Walters, signed a quitclaim deed on April 6, 1991 on behalf of the plaintiff conveying the subject property to the defendant. Plaintiff seeks an order declaring the transfer null and void and enjoining the defendant from claiming ownership rights in the property. Defendant counterclaims to quiet its title to the subject property and for an order requiring the plaintiff to quitclaim the property to the defendant in the event that the April 6, 1991 deed is found invalid. Defendant also renews its prior applications for sanctions under Rules 11 and 37 of the Federal Rules of Civil Procedure.

Suit originally was filed on January 17, 1992 in the Chancery Division of the Superior Court of New Jersey, Camden County, and the matter was subsequently removed to this court when the Conference filed a Notice of Removal on February 26, 1992, alleging both federal question and diversity jurisdiction. Defendant's motions to dismiss the Complaint, to dismiss the Amended Complaint, and for sanctions were denied. On February 25, 1994, the Conference filed motions for summary judgment and for sanctions which were denied by the Honorable Jerome B. Simandle on August 15, 1994.

The parties consented to the plenary jurisdiction of the Magistrate Judge to conduct the trial of this case pursuant to 28 U.S.C. § 636(c), and a one-day trial was conducted on December 14, 1994 before the court sitting without a jury. The testimony at trial consisted of three witnesses: (1) the Most Reverend Dr. Delbert L. Jackson, Presiding Bishop of the Conference; (2) Foster H. McNair, Secretary of the Board of Trustees of Scotts Church; and (3) Alton Clark, Chairman of the Board of Trustees of Scotts Church. The parties submitted into evidence nineteen documentary exhibits. Having considered the testimony and exhibits at trial and the arguments set forth in the trial briefs and post-trial submissions of counsel, the following constitute my findings of fact and conclusions of law in this case pursuant to Fed. R. Civ. P. 52(a).

I. Findings of Fact[1]

1. On March 12, 1915, Plaintiff was incorporated as a nonprofit corporation under the laws of the State of New Jersey with the name "African Union First Colored Methodist Protestant Church of Camden, New Jersey." Subsequently, the church name was changed to "Scotts African Union Methodist Protestant Church."

2. From its incorporation in 1915 until 1974, Scotts Church conducted its worship services at 715-717 Kaighn Avenue, Camden, New Jersey, in a building solely owned by Scotts Church. On June 5, 1974, Scotts Church acquired real property known as 2536 Baird Boulevard,

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[1] Any factual findings that do not contain citations to the record have been stipulated by the parties or are undisputed.

Camden, New Jersey, by way of deed from First Church of Christ, Scientist, of Camden. At all times from June 5, 1974 to April 6, 1991, the subject property was titled in Scotts Church. The Conference did not contribute funds to Scotts Church towards the purchase of this property.

3. Scotts Church's certificate of incorporation provides that its trustees "shall not dispose of any real estate so acquired by them as Trustees, except [as] such act is authorized by a vote of two-thirds of the members of said Church Body . . . " (Certif. of Incorp., Pl. Ex. 1.) The Scotts Church trustees and church members approved the 1974 sale of the 715-717 Kaighn Avenue property and purchase of the 2536 Baird Boulevard property.

4. The Conference is the administrative body of a religious organization generally known as the African Union Methodist Protestant Church (the "AUMP Church"), and sometimes referred to as the African Union First Colored Methodist Protestant Church (the "AUFCMP Church"). The AUFCMP Church is regional in scope, comprising many local churches throughout the Mid-Atlantic states that are connected by their common adherence to the AUFCMP Church denomination and doctrine.

5. At a point in time not disclosed in the record, Scotts Church became a member congregation, or local church, of the Defendant Conference.

6. The Conference is governed by *The Book of Discipline of the African Union First Colored Methodist Protestant Church and Connection in the United States of America and the World* ("*Book of Discipline*"). (Pl. Ex. 5.) The 18th edition, published in 1986, was placed into evidence at trial,

along with certain portions of the 17th edition, known as the *1958 Discipline.*

7. *The Book of Discipline* operates as the corporate bylaws of the Conference and Scotts Church.

8. During its affiliation with the AUFCMP Church, Scotts Church regularly sent delegates to those meetings of the Conference at which they were entitled to participate. (Tr. 122-123.)

9. The Conference and Scotts Church executed annual pastoral contracts under which the Conference appointed pastors for Scotts Church. Scotts Church paid the salaries of these pastors. (Tr. 53-54.) From May 27, 1990 through May 18, 1992, the Reverend Dr. Eva M. Walters was the Conference-appointed pastor at Scotts Church. (Def. Ex. 3-4).

10. The pastoral contract governing the period from May 27, 1990 through May 19, 1991 and the pastoral contract governing the period from May 19, 1991 through May 18, 1992 state that the trustees of Scotts Church "will be responsible as to all mentioned in the *Book of Discipline* according to the 1958 AUFCMP Church, Inc., and any/all revisions made to the *Book of Discipline,* entitled the Duties of the Trustees. . . . "[2]

The contracts also provide that the Reverend Dr. Eva M. Walters "is responsible to Trustees of the above said mentioned Church, of the first part, will be responsible as to all mentioned in the *Book of Discipline* according to the 1958 AUFCMP Church, Inc. and any/all revisions made

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[2] The *1958 Discipline* was in effect from 1958 until 1986.

to the *Book of Discipline*, entitled The Duty of Ministers in Charge. . . . " (Def. Ex. 3-4).

11. Defendant Conference was legally incorporated in Delaware on September 23, 1941. Although Defendant claims that it was originally incorporated in 1813 as the "Union Church of Africans" under a law passed by the Delaware legislature in 1787, it has failed to persuade the Court that the "Union Church of Africans" is the same entity as the defendant.

According to Defendant, two pieces of evidence collectively demonstrate that the Conference is the same organization as the Union Church of Africans which was incorporated in 1813 and which maintained its primary structure and religious association through a series of name changes, culminating in its most recent name change to the Defendant Conference. First, the Historical Preface to the *Book of Discipline* discusses the inception of the African Union First Colored Methodist Protestant Church. This church was formed at a General Convention on November 25, 1865, in Baltimore, Maryland. This new church united two other churches, the African Union Church and the First Colored Methodist Protestant. (Pl. Ex. 5, p. ii.) A purported transcription of the certificate of incorporation of the African Union Church states that it was recorded in the State of Delaware on September 18, 1813. (*Id.*, p. 3-4.) On the next page, a transcription of the certificate of incorporation of the African Union First Colored Methodist Protestant Church states that it was recorded in September, 1941. (*Id.*, p. 5-8.) This evidence only demonstrates that the Union Church of Africans is not the same entity as what is now known as the Conference, but rather was a component of the newly formed

African Union First Colored Methodist Protestant Church. The AUFCMP Church was incorporated in 1941 and changed its name to the Conference in 1953. Therefore, whether or not the Union Church of Africans was legally incorporated in 1813 is irrelevant to the defendant's corporate existence.

The defendant's second piece of evidence, a book which chronicles the history of the African Union Methodist Protestant Church and which the defendant claims is an authoritative treatise, (Tr. 184, 188-92), confirms the sequence of events discussed above and offers no further support for the defendant's position.[3]

The only credible evidence before the Court of Defendant's corporate existence is a 1953 amendment to the defendant's certificate of incorporation which states that the original certificate of incorporation was filed and recorded in the State of Delaware on September 23, 1941. (Def. Ex. 15.) There is nothing in this document or elsewhere in the record which indicates that the Conference is the same entity as the Union Church of Africans incorporated in 1813.[4]

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[3] The book is entitled *"Invisible" Strands in African Methodism: A History of the African Union Methodist Protestant and Union American Methodist Episcopal Churches, 1805-1980,* authored by Lewis V. Baldwin in 1983.

[4] Defendant also argues that this Court must give full faith and credit to the factual finding that the Union Church of Africans was incorporated in 1813 in an opinion rendered by Delaware's then-highest court in 1855. *See Union Church of Africans v. Sanders,* attached to Defendant's Trial Brief. Because we find that the defendant and the Union Church of Africans are separate entities, this contention is moot.

12. The language of Plaintiff's certificate of incorporation provides that its trustees are to hold real property in trust for Scotts Church.

The 1915 certificate of incorporation of Scotts Church begins:

> AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH OF CAMDEN, NEW JERSEY.
>
> THIS IS TO CERTIFY that we, Perry Gleaves, Leonard S. Smith, John F. Bartee, Thomas Kenaman, Enoch Crisden, Joseph Pierce, and Charles Stewart, do hereby associate ourselves into a corporation under and by virtue of an act of the Legislature of the State of New Jersey . . .
>
> 1. The name of the association or corporation is AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH OF CAMDEN, NEW JERSEY.

Paragraph 2 provides the procedure for disposition or transfer of the Church's property:

> 2. The purposes for which this association or corporation is formed are for the worship of Almighty God in accordance with the dictates of our consciences and the rules, regulations, doctrines, practices and beliefs of the African Union Colored Methodist Protestant Church;
>
> To acquire and possess property, both real and personal, as Trustees as aforesaid, by gift, grant or devise and to hold same in trust for the uses and purposes of said Church Body; to mortgage and dispose of the same.

> That said Trustees shall not dispose of any real estate so acquired by them as Trustees, except such act be authorized by a vote of two thirds of the members of said Church Body, who shall have been members in good standing in said Church Body for at least one year before the date of the meeting at which such action shall be proposed.
>
> That the Trustees of said African Union First Colored Methodist Protestant Church of Camden, New Jersey shall, at the time of their election, have been members of said Church in good standing . . .
>
> The successors to the Trustees herein before named shall be elected by ballot . . . at a meeting of the members of the Church . . .

Paragraph 4 provides:

> 4. There shall be seven Trustees of this association or corporation and the names of those selected for the first year are as follows. [The same seven names given at the beginning of the Certificate are repeated, all with addresses listed as Camden, New Jersey].

(Certif. of Incorp., Pl. Ex. 1.)

Defendant contends that the trustees of Scotts Church are obligated by the language of the certificate to acquire and hold real property in trust for the Conference. In support of this contention, Defendant maintains that "said Church Body" refers to the defendant in the phrase "to hold same in trust for the uses and purposes of said Church body." Defendant also argues that the references in the purpose clause to the "African Union Colored Methodist Protestant Church" and the "rules,

regulations, doctrines, practices and beliefs" are to the defendant and the *Book of Discipline*, respectively.

A logical reading of the certificate, as a whole, indicates otherwise. It is apparent from the purpose clause that the trustees of Scotts Church incorporated for the purpose of religious worship in accordance with the doctrine of a particular denomination; however, nowhere in the certificate do the incorporators mention the defendant or the *Book of Discipline*, even though the defendant contends that the book has existed since 1813 as the doctrinal and administrative authority of the AUFCMP Church. (Tr. 15-16.) Even if the reference to the African Union Colored Methodist Protestant Church is to the religious organization affiliated with the Conference, the subsequent references to "said Church Body" preclude any inference that real property is to be held in trust for the Conference or the AUFCMP Church.

Taken together, the three references to "said Church Body" in Paragraph Two demonstrate that this phrase means Scotts Church, and not the defendant. When the incorporators provided a means for transfer of real property by the trustees upon a "vote of two thirds of the members of said Church Body, who shall have been members in good standing in said Church Body", they surely could not have meant that they required a vote by two-thirds of the members of the Conference or of the entire AUFCMP Church. The plain meaning of the language supports Plaintiff's interpretation that its certificate of incorporation provided for real property to be held in trust for the uses and purposes of the plaintiff church.

Furthermore, since the Conference did not even exist as a legal entity until 1941, it is doubtful that the plaintiff's 1915 certificate of incorporation would hold property in trust for the Conference.

The plaintiff's past practice with respect to disposition of its real property also favors the plaintiff's interpretation of the disputed language. When the plaintiff sold its property at 715-717 Kaighn Avenue and purchased the 2536 Baird Bouleverd property in 1974, it took title in its own name, and the deed does not provide that the purchased property is to be held in trust for the defendant. (Pl. Ex. 2.) Defendant argues that the plaintiff disobeyed the *Book of Discipline* when it purchased this property in its own name. However, there is no sign that the defendant took any action in response to the plaintiff's alleged misconduct, even though the *Book of Discipline* states that local trustees "may be dismissed when they do not perform their duties in accordance with the ruling of the Bishop and the Conference." (Pl. Ex. 5, Art. III, p. 71.) The plaintiff's action, and the defendant's inaction, suggest to the Court that the understood meaning of the plaintiff's certificate of incorporation was that a transfer of property belonging to the plaintiff required a two-thirds vote of the members of Scotts Church to authorize action by its trustees, and any property acquired was to be held in trust for the uses and purposes of Scotts Church.

13. Local churches of the Conference are divided geographically into three Districts. (Pl. Ex. 5, Part IV, Art. II, p. 34.) Scotts Church is in the First District (also called the Middle District) which comprises "a part of South Jersey, a part of Pennsylvania and a part of the State of

Delaware, New York State and Canada." (*Id.*) Each District is further broken down into Circuits and Stations. (*Id.*)

14. The *Book of Discipline* requires that the defendant Conference and its local churches conduct a structured series of organized meetings. (*Id.*; Tr. 13-14.) A quadrennial meeting, or General Conference, is to be held on the second Wednesday in September, in a location to be determined by the General Conference. (Pl. Ex. 5, Part IV, Art. VIII, p. 54, para. 1; Tr. 14.) The General Conference consists of an equal number of ministers and laymen, with one minister representing every fifty church members, (Pl. Ex. 5, p. 54, para. 3.), and it has broad power to make the rules and regulations with respect to every aspect of the AUFCMP Church. (*Id.*, Art. IX, p. 56, para. 1.)

15. An annual meeting, or Annual Conference, is to be held within each District. (*Id.*, Art. VI, p. 42, para. 1.) The Annual Conference is held in May of each year. (Tr. 14-16.) Notification of the date and location of each Annual Conference is given at the previous year's Annual Conference and is published in the annual Conference calendar. (Tr. 17-18.) The Annual Conference consists of all the ministers in the District, as well as one lay delegate from each circuit and station. (P1. Ex. 5, Part IV, Art. VI, p. 42, para. 1.)

The Annual Conference has the power to inquire into the character of all its members, to vote upon recommended ministers, to elect pastors, hear and decide appeals, define and regulate the boundaries of circuits

and stations, and to "perform other duties as are prescribed by the General Conference." (*Id.*, para. 5.) The Annual Conference also has the authority to "make such rules and regulations as the peculiarities of the District may require," provided that no rule shall be inconsistent with the *Book of Discipline* and that the General Conference has annulment authority. The Annual Conference has "exclusive power to make its own rules and regulations for the admission and government of its members." (*Id.*, p. 43, para. 3.)

16. In addition to the Annual Conference, a District Conference is to be held annually in each District as authorized by the Annual Conference. (*Id.*, Art. V, p. 41.) The Presiding Bishop shall fix the date and place of each District Conference. The powers of the District Conference are limited and include: (1) inquiring into the activities of each local church; (2) licensing preachers; and (3) recommending minister candidates to the Annual Conference. (*Id.*)

17. The *Book of Discipline* also requires Quarterly Conferences to be held in each Circuit or Station every year. (*Id.*, p. 38; Tr. 14-15.) These meetings are attended by the local church officials and leaders, and their subject matter generally involves oversight of individual church members and local finances. (Pl. Ex. 5, p. 38; *Id.*)

18. Apart from these designated meetings, special sessions of the Annual Conference "may be held as provided by the *Discipline*." (*Id.*, Art. VI, p. 46.) The *Book of Discipline* does not further elaborate upon the circumstances or procedures by which special sessions may be called.

19. On January 19, 1991, the Conference held a meeting in Mardella Springs, Maryland. A summary of the meeting minutes (submitted post-trial) reflects, and Bishop Jackson testified, that the attendees of this meeting voted to pass a resolution which provides that titles to all real property held by a local church shall be held in trust for the Conference ("Church Property Resolution"). (Def. Ex. 1; Tr. 32.)

An unsigned document under the letterhead of African Union Methodist Protestant Church, Inc., was introduced to show the written content of the Church Property Resolution. According to this document, "title to all property, now owned or hereafter acquired by an incorporated local church, . . . shall be held by and/or conveyed to the corporate body in its corporate name, in trust for the use and benefit of such local church and of The African Union Methodist Protestant Church." (Def. Ex. 1, C-11.)

The Resolution also provides that where a deed exists without the required trust clause language, local churches still have a responsibility to the Conference, provided that the local church has indicated its affiliation by, *inter alia*, the acceptance of pastors designated by the Conference. (*Id.*, para. 5, A-20.) There was no testimony presented as to whether one of the responsibilities of a local church without the required trust clause in a deed is to hold its property in trust for the Conference, but the Court will infer from the context of the document that a local church has such a responsibility under this clause.

20. On April 6, 1991, another meeting was held in Wilmington, Delaware. The meeting minutes (submitted by both audiotape and a typed summary) reflect Bishop

Jackson's testimony that another resolution was voted on and passed by the attendees at this meeting. (Tr. 61-63.) This resolution provides that the "ministers in charge of [the local churches] shall be empowered to sign official documents pertaining to the individual local church and The Conference. . . . " ("Signature Resolution"). (Def. Ex. 2.) The content of this resolution also was introduced by way of an unsigned document under the letterhead of African Union Methodist Protestant Church, Inc.

21. At this April 6, 1991 meeting and pursuant to the recently adopted Signature Resolution, Defendant Conference instructed Dr. Walters to execute a quitclaim deed transferring Plaintiff's interest in the 2536 Baird Boulevard property to the Defendant Conference. Dr. Walters did execute the quitclaim deed, and it was recorded on April 26, 1991.

22. The April 6, 1991 quitclaim deed states that "the trustees of SCOTTS AFRICAN UNION METHODIST PROTESTANT CHURCH have caused its name by Reverend Dr. Eva M. Walters, its Pastor, to be hereunto set . . . " (Pl. Ex. 3.)

23. The transfer of the subject property from Scotts Church to the Defendant Conference was not authorized by the plaintiff's trustees or its church members.

24. By a 24-to-0 vote by its members, Scotts Church voted to disaffiliate itself from the Conference on March 26, 1992.

II. CONCLUSIONS OF LAW

A. Fraudulent Misrepresentation

1. Plaintiff claims that the April 6, 1991 quitclaim deed was invalid because Bishop Jackson fraudulently induced Dr. Walters to sign the deed by representing to her that the trustees of Scotts Church authorized the transfer. On a claim for legal fraudulent misrepresentation, the plaintiff must prove that the defendant made: (1) a material representation of presently existing or past fact; (2) with knowledge or belief of its falsity; (3) with the intent that another person rely on it; (4) that person did reasonably rely upon that representation; and (5) resultant damages. *Nappe v. Anschelewitz, Barr, Ansell & Bonello*, 97 N.J. 37, 51-52, 477 A.2d 1224, 1232 (1984); *B.F. Hirsh v. Enright Refining Co., Inc.*, 751 F.2d 628, 631 (3d Cir. 1984).

Proof of equitable fraud does not require the element of scienter, *i.e.*, knowledge of the falsity and an intent to obtain an undue advantage. *Bonnco Petrol, Inc. v. Epstein*, 115 N.J. 599, 609, 560 A.2d 655, 660 (1989).

The Court finds that Plaintiff has failed to sustain its burden of proof with respect to its claim of fraudulent misrepresentation. There are no factual findings which support a conclusion that Bishop Jackson, or anyone else from the Conference, told Dr. Walters that Scotts Church's trustees had authorized the transfer of the subject property. Nor is there any evidence from Dr. Walters, or anyone else, that she relied upon such a representation when she signed the quitclaim deed. Therefore, regardless of the fact that the Scotts Church trustees had not authorized the transfer, the April 6, 1991 quitclaim deed

cannot be invalidated on a theory of fraudulent misrepresentation based on the record before the Court.

B. Legal Ownership of 2536 Baird Boulevard

2. As Judge Simandle discussed in his denial of summary judgment, the opinion of the United States Supreme Court in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), provides the analytical framework for deciding property disputes between religious organizations. The Court held in *Jones v. Wolf* that a state is constitutionally entitled to adopt any method of adjudicating a church property dispute as long as it does not implicate religious doctrine and practice. The Court suggested that an analysis based on "neutral principles of law" would avoid interference with First Amendment constraints.

A federal court in a diversity action must apply the choice-of-law rules of the forum state. *Shuder v. McDonald's Corp.*, 859 F.2d 266, 269 (3d Cir. 1988) (citing *Klaxon v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496 (1941)). For real property disputes, the law of the state where the land is situated controls its title, transfer, and disposition. *United States Trust Co. of New York v. New Jersey*, 266 N.J. Super. 8, 12, 543 A.2d 457, 460 (App. Div. 1988); *Segal v. Greater Valley Terminal Corp.*, 83 N.J. Super. 120, 124-25, 199 A.2d 48, 51 (App. Div. 1964).

In New Jersey, a court "may, where appropriate, apply neutral principles of law to determine disputed questions that do not implicate religious doctrine." *Elmora Hebrew Ctr., Inc. v. Fishman*, 125 N.J. 404, 414-15, 593 A.2d 725, 729-30 (1991). This approach uses "wholly

secular legal rules" and involves consideration of the deeds, state statutes governing the holding of church property, and the local and general church's charter, constitution, and bylaws.[5] *Id.*

(i) Validity of April 6. 1991 Deed

3. Plaintiff claims that the deed transferring the 2436 Baird Boulevard property to the defendant is invalid because Dr. Walters lacked the authority to execute the deed without the authorization of the Scotts Church trustees and members. Of initial importance to this determination is whether the language itself of the Church Property Resolution and the Signature Resolution conferred such authority upon Dr. Walters.

After careful consideration of the language of the resolutions and the discussion of the Signature Resolution contained in the audiotape of the April 6, 1991 meeting, the Court finds that it does not. The Church Property Resolution declares that all property held by incorporated local churches is to be held by or conveyed to that local church in its own name, and in trust for the local

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[5] Both Plaintiff and Defendant submit judicial opinions from other states to which they argue this Court must give full faith and credit. The defendant was a party to all of these actions and most of them involved the validity of quitclaim deeds of the local churches' properties executed on April 6, 1991. However, many of these cases came to conflicting conclusions. and the individual local churches all had different dates of incorporation, certificates of incorporation, deed language, and state statutes. For these reasons, the Court declines to rely upon any of these cases for purposes of collateral estoppel.

church, as well as for the AUMP Church. The resolution also states that local churches without a trust clause in their deeds have a responsibility to hold their property in trust for the Conference. This language, by itself, while possibly imposing certain obligations upon a local church, does not confer authority to a local pastor to sign a deed transferring local church property. The express language of the Church Property Resolution required incorporated local churches to hold property in *their own name,* in trust for the purposes of that local church and for the AUMP Church. This does not legitimize a deed which purports to transfer property out of the name of Scotts Church and to "The Conference of African Union First Colored Methodist Protestant Church."[6]

The Signature Resolution provides that local pastors may sign official business documents on behalf of local churches. This does not abrogate the requirement that members vote upon any action taken by the local church with respect to transfer of property; it merely authorizes Dr. Walters to sign the deed once the vote has been taken and action authorized. This conclusion is bolstered by Bishop Jackson himself during the discussion of this resolution, as heard on the audiotape of the April 6, 1991 meeting. Several questions by concerned members were put to Bishop Jackson during the voting on this resolution. When asked whether the Signature Resolution

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[6] The Court makes this determination based only upon the document representing the Church Property Resolution, as nothing was submitted to the Court, whether by audiotape or transcription, that reflects any detailed discussion or explanation of this resolution at the January 19, 1991 meeting.

would override the authority of local church trustees, the Bishop replied that the resolution "does not take away the power of the trustees." The Bishop repeatedly reassured the members that the resolution did not change existing procedures, that the pastor and trustees are to work together in any business action, and that the resolution only gave the pastor the power to sign *along with* the trustees. In response to one member's concern that the pastor could potentially act without the members' knowledge and "squeeze" the trustees out of power, the Bishop replied, "Before the pastor or the trustees can do anything, they have to take it back to the people." (Def. Ex. 9; Tape III, Side A.)

The attorney present at the meeting to present this resolution, K. Kay Shearin, Esq., also assured the members that "what the Bishop told you a few minutes ago was absolutely right." Ms. Shearin explained the impact of the Signature Resolution as simply giving the local churches the power of the Conference behind them when they want to transact business, particularly when they want to borrow money for expansion and development projects. "We're not taking anything away from the individual churches. The local trustees still have their authority." (*Id.*)

The language of the Signature Resolution, along with the discussion about its significance, reveal that the resolution did not provide authority for Dr. Walters to sign a deed conveying the property in the absence of member and trustee approval. Since the members and trustees of Scotts Church never authorized the transfer of the 2536 Baird Boulevard property to the Conference on April 6,

1991, the Court finds that the April 6, 1991 quitclaim deed signed by Dr. Walters is invalid.

(ii) Ownership of Property Upon Secession

4. Defendant counterclaims for an order quieting title to the subject property in the event the April 6, 1991 deed was found to be invalid. The defendant claims that it owns the property by virtue of the plaintiff's secession, because the plaintiff was obligated to hold the property in trust for the defendant and, upon secession, the property was to be transferred to, remain with, or revert back to the defendant. In addressing this contention, the court must look to the applicable deeds, statutes, and bylaws to determine whether there is any basis for a determination that the plaintiff was in fact obligated to hold the property in trust for the defendant. *Jones v. Wolf, supra; Protestant Episcopal Church in the Diocese of New Jersey v. Graves,* 83 N.J. 572, 417 A.2d 19 (1980), *cert. denied sub nom Moore v. Protestant Episcopal Church,* 449 U.S. 1131, 101 S.Ct. 954, 67 L.Ed.2d 119 (1981). Defendant bears the burden of proof on its counterclaim.

The Court has already found that neither the plaintiff's certificate of incorporation nor the 1974 deed to the 2536 Baird Boulevard property bound the plaintiff to hold its real property in trust for the defendant. The applicable provisions of New Jersey's religious corporation statute do not require real property of a local church to be held in trust for the AUMP Church. *See* N.J.S.A. 16:1-1 *et seq.* (1984 & Supp. 1994).

The question then becomes whether the *Book of Discipline* provides a basis for the creation of an implied trust

in favor of the Conference. There are two provisions of the *Discipline* that Defendant argues create such a trust. The first is a provision in the *1958 Discipline* which states that all church property "belonging to the Connection shall be deeded to the members and Connection, and should the members disband or secede the property shall remain in the possession of the Connection." (Def. Ex. 10, Art. X, para. 6.) The provision further provides that "each local Church shall be so incorporated that if the members should disband or secede, the said Church and property shall remain in the Connection." (*Id.*) This provision was in effect from 1958 to 1986 and does not appear in the current edition.

Defendant argues that the plaintiff is bound by this language, by virtue of the pastoral contract and the plaintiff's general obligation to follow the *Book of Discipline*, to deed its property to the defendant and to transfer the property to the defendant upon its secession.

The Court disagrees with the defendant's argument for several reasons. First, although the Defendant argues that this is one of the parts of the *Book of Discipline* that the plaintiff expressly agreed to abide by in its pastoral contract with the Conference, the Court notes that this provision is located under the section entitled "The Duty of Ministers in Charge," which is the section that the Conference-appointed pastor agreed to abide by under the pastoral contract, not the local church.[7]

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[7] In Ms. Shearin's cross-examination of Bishop Jackson, she pointed out that the pastoral contract only obligated the local trustees to follow the provisions of the Duties of the Trustees and the pastor to follow the provisions of the Duties of Ministers in Charge, not the *Book of Discipline* as a whole:

Second, since no pastoral contracts were presented for the years during which this provision of the *1958 Discipline* was in effect, there is no evidence before the Court that the plaintiff was obligated, by virtue of a pastoral contract, to follow this provision. The only pastoral contracts introduced were for the years 1990-1992. This provision was deleted from the 18th edition of the *Discipline* that was in effect in 1990-1992. There was no testimony by either party that any pastoral contracts that may have been executed between the parties prior to 1986 (when the current edition of the *Discipline* came into effect) contained the identical language of obligation as the 1990-1992 contracts. Therefore, the Court cannot make a finding that this provision of the *1958 Discipline* ever obligated the plaintiff under a pastoral contract.

Third, even if the plaintiff was generally bound to follow the *Book of Discipline,* the language of this provision is too unclear and ambiguous to be the basis for a finding that the language created an express or implied trust in favor of the Conference. The provision says that all property belonging to the "Connection" shall be deeded to the members and the Connection. The Connection is not the same thing as the Conference. The *Book of Discipline* defines the Connection as "[t]he structural

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Ms. Shearin: So [the pastoral contract] really doesn't say they promised to abide by all the provisions. Does it just say the Duties of the Trustees and the Duties of the Ministers in Charge?

Bishop Jackson: Yes, ma'am.

(Tr. 68.)

organization of all AUMP Local Churches having a connected network of compatible interdependent relationships to achieve the purpose of the church", and the Conference is defined as "[a]n administrative body in the structure of the AUMP Church such as general, annual, district, quarterly and chrch [sic] conference." (Pl. Ex. 5, Glossary, at 157.) Without an explanation by the defendant of what it means for property to "belong to the Connection" and whether such property also belongs to the Conference, the Court will not make the broad assumption that property that is solely titled in the name of a local church, and that was purchased solely through the funds and efforts of the local church, also belongs to the Connection, and, derivatively, to the Conference. Following that, if it doesn't belong to the Connection, then there is no obligation under this provision to deed it to the Connection, and there is no basis for the property to "remain in" the Connection upon secession.[8]

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[8] Defendant argues that this Court owes deference to the findings of fact and conclusions of law in the unreported opinion of the Pennsylvania Court of Common Pleas, Lancaster County, in *The Conference of AUFCMP Church v. Shell*, No. 4165-1989, attached to Defendant's Brief in Support of Motion to Dismiss. The court in *Shell* found the same language of the provision in the *1958 Discipline* to clearly require the real property of the local church to be deeded to the Conference. This Court, however, is not bound by findings in unreported decisions, *Nestle Foods Corp. v. Aetna Cas. and Surety Co.*, 135 F.R.D. 101, 105 (D.N.J. 1990). Moreover, the *Shell* case is not a final determination, as it currently is under appeal to Pennsylvania Commonwealth Court. *See Conference of AUFCMP v. Shell*, 426 Pa. Super. 374, 627 A.2d 188 (Pa. Super. 1993). Accordingly, its findings are of no weight to this Court's determinations.

Whether or not this is the correct reading of the language of this provision is irrelevant, for the crucial determination is that the language is ambiguous, and the Court will not adopt, without support, the drafter's interpretation. *Michele Matthews, Inc. v. Kroll & Tract*, 275 N.J. Super. 101, 109, 645 A.2d 798, 802 (App. Div. 1994) (citing *In re Miller's Estate*, 90 N.J. 210, 221, 447 A.2d 549 (1982)) (where ambiguity exists in written agreement, the writing is to be construed against the party preparing it). Had the defendant meant this provision to require the transfer of local church property to the Conference, it could have simply and unambiguously stated that request.

Finally, this provision was not in effect in 1991 when the plaintiff seceded from the Conference. Thus, there is no basis for a finding that the act of secession triggered an obligation to transfer the property to the defendant under this provision.

Having found that the language of this provision in the *1958 Discipline* did not create an express or implied trust in favor of the Conference, the Court also refuses to create a constructive trust in favor of the Conference. A constructive trust may be imposed when failure to do so would result in unjust enrichment. *D'Ippolito v. Castoro*, 51 N.J. 584, 588-89, 242 A.2d 617, 619 (1968). Generally, a constructive trust is based upon a finding that there was some wrongful act, usually fraud, mistake, undue influence, or breach of confidential relationship, which has resulted in a transfer of property. *Id.* The Court has made no finding of a wrongful act on the part of Scotts Church, nor can it be said that Scotts Church was unjustly enriched by the retention of its own property where it

purchased the property entirely out of its own funds and the defendant contributed nothing.

5. The other provision in the *Book of Discipline* that arguably creates an obligation on the part of the plaintiff to hold the property in trust for the defendant is the Church Property Resolution.[9] However, this Court finds that this resolution has no force and effect because it was adopted in a manner that is inconsistent with the procedures set forth in the *Book of Discipline.*

Under the internal affairs doctrine, the determination of whether a corporation acted in accordance with its bylaws when adopting resolutions is governed by the law of the state of incorporation. *Edgar v. MITE Corp.*, 457 U.S. 624, 645, 102 S.Ct. 2629, 2642, 73 L.Ed.2d 269 (1982). Accordingly, Delaware law applies to the issue of whether the Church Property Resolution was validly adopted.

A corporation can only act in accordance with the powers granted to it by its certificate of incorporation, its bylaws, and the statute under which it was created. *Lawson v. Household Finance Corp.*, 17 Del. Ch. 343, 348-49, 152 A. 723, 726 (1930); *Davis v. Louisville Gas & Elec. Co.*, 16 Del. Ch. 157, 160, 142 A. 654, 656 (1928). Resolutions or amendments to bylaws that are adopted under procedures that are directly contrary to those required by the

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[9] The Court will assume for the sake of argument that resolutions such as the Church Property Resolution officially become amendments to the *Book of Discipline* upon their adoption; the only evidence that this is true is the Bishop's conclusory statement that the Church Property Resolution is now a part of the *Discipline.* (Tr. 41.)

bylaws are invalid. *See Moon v. Moon Motor Car Co.*, 17 Del. Ch. 176, 183, 151 A. 298, 301 (1930) (amendment to bylaws which was adopted at meeting other than a regular meeting was invalid where the bylaws prescribed that they could only be amended at a regular meeting). *See also Grupe v. Rudisill*, 101 N.J. Eq. 145, 136 A. 911 (Ch. 1927) (sale of church property was set aside where it was voted upon in violation of bylaws).

The defendant's bylaws are very specific with respect to the powers and duties attendant to the various types of meetings of the Conference and its local churches. There are only three types of meetings, the Annual Conference, General Conference, and Special Sessions, at which members have the power to pass and adopt resolutions for the governance of the Defendant and its member churches. Any attempt to pass a resolution amending the bylaws which is made at a meeting other than the Annual Conference, General Conference, or Special Session is invalid.

It is unclear from the record exactly what type of meeting was held on January 19, 1991 when the Church Property Resolution was passed. Entitled the "Special General Session and Third District Meeting," the January 19, 1991 meeting was not an Annual Conference of the First District because it was not held in September, nor was it held within the geographical confines of the First District. It was not the quadrennial General Conference. If it was a District Conference or Quarterly Meeting, clearly the adoption of amendments to the bylaws was beyond the scope of the attendees' authority. Therefore, the Court must determine whether the January 19, 1991 meeting was properly called as a Special Session of the Annual Conference in accordance with the bylaws.

Bishop Jackson's testimony only serves to obscure this issue. He testified that the January meeting was a District Meeting and a Special General Session. (Tr. 19.) He testified that the persons who must attend District Meetings are the representatives, ministers, officials, and lay members of all of the member churches in the United States. (Tr. 19-20.) This directly contradicts the bylaws' directives that the District Meetings shall be local in membership and function. (Pl. Ex. 5, p. 41.) He then testified that it has been the practice of the defendant to hold these District Meetings and Special General Sessions four times a year, and that the January 19, 1991 meeting was approved by the Annual Conference and published in the annual calendar, thereby making it generally known that these types of meetings are always held. (Tr. 22, 26, 29.) However, this testimony is uncorroborated and disputed by the plaintiff, (Tr. 124-125), and the Court finds that it is insufficient to prove a waiver of the specific meeting requirements outlined in the bylaws through a custom or practice. *See In the Matter of Osteopathic Hosp. Ass'n*, 41 Del. Ch. 369, 195 A.2d 759 (1963); *In re Ivey & Ellington, Inc.*, 28 Del. Ch. 298, 42 A.2d 508 (1945).

Article VI of the "Terms of Membership" of the *Book of Discipline* covers the composition and power of the Annual Conference. It is under this Article that the authority is given to hold Special Sessions. (Pl. Ex. 5, p. 46; Tr. 60.) There are no provisions for when or under what circumstances such meetings may be called, nor are there any requirements for what type of notice needs to be given to church members. (Tr. 45.) There was no evidence put on the record that clarifies the defendant's

authority to call Special Sessions. In fact, the only inference that can be drawn is from the context of Article VI, and it is from this context that we can conclude only that the Annual Conference may call a Special Session through its presiding officer, the Bishop.

If the certificate of incorporation, constitution, or bylaws of a corporation do not provide for notice requirements of meetings, notice shall be given as provided for in state or local law. Under Delaware corporation law, "[w]henever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called." Del. Code Ann. 8 § 222(a). This written notice "shall be given not less than 10 nor more than 60 days before the date of the meeting." Del. Code Ann. 8 § 222(b). The Court finds that no such notice was given.

Bishop Jackson testified that notice of the January meeting was given at the previous year's Annual Conference in May and published in the annual Conference calendar. (Tr. 26, 50.) He also testified that he sometimes asks secretaries to call ministers to remind church members of upcoming meetings, but he has no record whether this was done specifically for the January meeting. (Tr. 50-51.) Both Foster McNair, Secretary of the Trustees of Scotts Church, and Alton Clark, Chairman of the Board of Trustees of Scotts Church, testified that they received no notice of either the date or purpose of the January and April meetings, (Tr. 102, 118-119), and no lay delegates from Scotts Church attended the January and April meetings. (Tr. 125.) The Court finds that the notice that was

given, if any, is insufficient as a matter of law.[10] Therefore, the "Special Session" of January 19, 1991, if that is what it in fact was, was not held in accordance with the defendant's bylaws, and so the Church Property Resolution that was passed at that meeting has no legal force and effect.

6. Plaintiff raises the additional argument that, assuming that the resolution was validly adopted and amended to the *Book of Discipline* and that it unequivocally imposes an obligation upon the plaintiff to hold the subject property in trust for the Conference, the procedure for transferring church property in its certificate of incorporation prevails over any contradictory procedure in the *Book of Discipline*. As the plaintiff is a New Jersey corporation, the question of the priority between

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[10] Although the Court was not presented with the transcription of the January 19, 1991 meeting, the tape of the April 6, 1991 meeting, which was designated as the same type of meeting, is enlightening as to the notice and understanding of the members regarding the actions being taken there. From the discussion at the April meeting about the Signature Resolution, it is apparent that the members had not been presented with the resolution or its intended purpose beforehand. At one point in the meeting, a member stood up and stated:

> It is my feeling that this important an issue, you're asking me, as one individual, to make a decision for all the people of my church. I don't think this is fair. I think they should have something to say in this.

(Def. Ex. 9; Tape III, Side A.)

This individual's apprehension reflects the Court's concern over the rulemaking authority of the attendees of the meetings of January 19 and April 6, 1991. The Bishop responded by reassuring the member that the Signature Resolution was nothing new.

its certificate of incorporation and bylaws is one governed by New Jersey law. *See Edgar v. MITE Corp., supra.*

Generally, where an inconsistency exists between bylaws and a certificate of incorporation, the certificate of incorporation ordinarily governs. *L.L. Constantin & Co. v. R.P. Holding Corp.*, 56 N.J. Super. 411, 421, 153 A.2d 378, 383-84 (Ch. Div. 1959); *Leeds v. Harrison*, 15 N.J. Super. 82, 97-98, 83 A.2d 45, 53 (Ch. Div. 1951), *rev'd on other grounds*, 9 N.J. 202, 87 A.2d 713 (1952). A bylaw of a corporation can neither enlarge the rights and powers conferred by the certificate of incorporation nor restrict the duties and liabilities specially conferred thereby, and in case it attempts to do so, the bylaw is a nullity. *Leeds v. Harrison*, 15 N.J. Super. at 97-98.

The defendant's certificate of incorporation was not presented to the Court, and so no finding can be made as to whether it contains language of trust with respect to local church property. Plaintiff's certificate of incorporation requires real property to be held "in trust for the uses and purposes of said Church Body," which refers to Scotts Church. The Church Property Resolution, requiring all real property owned by member churches to be held in trust for the Defendant, is in direct conflict with the plaintiff's certificate of incorporation. Since the plaintiff's certificate of incorporation has not been amended since 1915, those parts of the Church Property Resolution that conflict with Scotts Church's certificate of incorporation have no legal effect.

Defendant argues, however, that the purpose enunciated by the plaintiff's certificate of incorporation to "worship . . . Almighty God in accordance with the dictates of

our consciences and the rules, regulations, doctrines, practices and beliefs of the African Union Colored Methodist Protestant Church" obligates the plaintiff to abide by the *Book of Discipline*. Defendant claims that the purpose clause of a certificate of incorporation is primary to any subsequent provisions within that certificate, and, since this promise to adhere to the *Discipline* is contained in the purpose clause, any requirements for the disposition of property found in the *Discipline* prevail over the certificate's supermajority-approval provision. The Court will not accept this strained argument in light of its finding that the language of the purpose clause does not unequivocally refer to the defendant or the *Book of Discipline*.

CONCLUSION

Having found that the April 6, 1991 quitclaim deed is invalid and that there is no basis in the relevant deeds, bylaws, certificate of incorporation, and statutes for a finding that the subject property was to be held in trust for the Conference, the Court holds that legal title to the property known as 2536 Baird Boulevard in Camden, New Jersey remains in the plaintiff, Scotts Church, and has not been transferred to the defendant Conference by way of the April 6, 1991 quitclaim deed. For these reasons, the Court also holds that the defendant is not entitled to quiet title to the subject property by virtue of the plaintiff's secession from the Conference. The Court denies the defendant's request to impose fees and costs pursuant to Fed. R. Civ. P. 11 and 37.

The accompanying Order shall enter today.

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States Magistrate Judge